

United States Senate
Impeachment Trial Committee

Impeachment of Judge G. Thomas Porteous, Jr.,
U.S. District Judge
For the Eastern District of Louisiana

Volume II

Tuesday, September 14, 2010
Dirksen Senate Office Building
Washington, D.C.

APPEARANCES:

SENATE IMPEACHMENT TRIAL COMMITTEE:

Senator Claire McCaskill (D-MO) - Chairman

Senator Orrin Hatch (R-UT) - Vice Chairman

Senator John Barrasso (R-WY)

Senator James DeMint (R-SC)

Senator Michael Johanns (R-NE)

Senator Edward Kaufman (D-DE)

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Senator Jeanne Shaheen (D-NH)

Senator Thomas Udall (D-NM)

Senator Sheldon Whitehouse (D-RI)

Senator Roger Wicker (R-MS)

SENATE LEGAL COUNSEL:

Morgan Frankel, Senate Legal Counsel

Pat Bryan, Senate Legal Counsel

Thomas Caballero, Assistant Senate Legal Counsel

Grant Vinik, Assistant Senate Legal Counsel

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APPEARANCES (Continued):

HOUSE OF REPRESENTATIVES MANAGERS:

Representative Adam B. Schiff (D-CA)
Representative Robert W. Goodlatte (R-VA)
Representative Zoe Lofgren (D-CA)
Representative Henry C. Johnson (D-GA)
Representative James Sensenbrenner, Jr. (R-WI)

HOUSE OF REPRESENTATIVES IMPEACHMENT COUNSEL:

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Mark Dubester, Special Impeachment Counsel
Harold Damelin, Special Impeachment Counsel
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RESPONDENT'S COUNSEL:

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Keith Aurzada, Esq.
P.J. Meitl, Esq.
Daniel O'Connor, Esq.
Brian Walsh, Esq.
Daniel Schwartz, Esq.

P R O C E E D I N G S (8:11 a.m.)

CHAIRMAN MC CASKILL: Good morning to all. I want to thank my colleagues for being here so promptly this morning. I apologize there wasn't coffee in the back when you got here, but it should be here any minute. So as long as there's seven of us on the dais, people are free to wander back and get coffee as it arrives.

I want to thank everyone. I think we had a very long, productive day yesterday. We're going to have the same kind of day today. Let me do a little housekeeping in terms of the schedule. We are supposed to have a series of three votes beginning at 11:00.

So it is my intention to go without a break until those votes are called, wait until five or 10 minutes into the first vote, and then adjourn until approximately 11:40. So everyone will have an opportunity to go over and cast all three votes, and we won't have to run back and forth.

But as soon as the third vote is cast, I would ask all of you to come back very, very quickly so that we can get an hour in between approximately 11:40 and 12:40.

And then we will break for caucus lunches, and we will then resume -- I think we will resume at 2:30. And then we will -- it's my intention to stay if not as late, almost as late as we did yesterday, and hopefully we will

be able to get a lot more done.

There was a motion -- there was a motion by the House to admit into evidence the exhibit that was a 302. We have visited with our counsel, and Senator Hatch and I visited about it. I think the committee's inclination is to not admit the 302 as evidence for the same reasons that we did not admit the grand jury testimony in total, but even more so because it was not under oath, and so therefore, we think probably it's not appropriate for it to be admitted into evidence.

Obviously, using any method that you have to impeach or to refresh recollection is okay, but we're not going to admit the 302s as evidence in and of themselves. So I wanted to give you that decision.

Let me also give you your time. The House has 15 hours and 40 minutes remaining, and Judge Porteous has 16 hours and 13 minutes remaining.

I think there has been a request, it's my understanding, Congressman Schiff, that you have decided not to call Mr. Levenson as a witness in the House's case?

MR. SCHIFF: That is correct, Madam Chair, not at this time.

CHAIRMAN MC CASKILL: And it's my understanding, Mr. Turley, that you all do want to call Mr. Levenson as a witness in your case?

MR. TURLEY: We do, Madam Chair. We're prepared now, or he can be held over.

CHAIRMAN MC CASKILL: I'm trying to let you all try your cases, and I think it's not appropriate for us to interrupt the House's case with a witness for Judge Porteous. So I'm going to let the House finish their case, and Mr. Levenson will just have to stay over until -- I would ask, if possible, unless you have a really good argument not to -- obviously, the argument is going to pay for him to stay here until your case begins. We would ask that you put him on at the beginning of your case so that he is not held over over the weekend.

MR. TURLEY: The committee has previously instructed us, there were other cancellations by the government, including Judge Greendyke, which occurred right before the start of the trial, and we're on instructions also to put him forward. It's having a pretty disruptive impact on our case, because our bankruptcy witnesses and lawyers must leave when we start our case, we have a very short time before they all have to leave.

That's one of the reasons why I suggested that they could just pass the witness today. They could just say what's your name and say we pass the witness. If they don't do that, we need to move our bankruptcy people because they are leaving town and we're already shifting

one of their previous witnesses forward to accommodate Mr. Greendyke.

And so we will promise to try to get Mr. Levenson as early as possible, but we do need to move those witnesses out at this point.

CHAIRMAN MC CASKILL: Are the bankruptcy witnesses under subpoena?

MR. TURLEY: Several of them are paid-for experts. But like Mr. Greendyke, when their witness said I have to leave, we were told okay, call him early. So we shifted all of our witnesses. And now our witnesses have, you know, reservations and plane reservations. To knock them out -- we talked to them last night, and there was no cancellation of Mr. Levenson.

CHAIRMAN MC CASKILL: Why don't we get started, and over the break or over the lunch break, we will have an opportunity to discuss this as a matter of housekeeping when witnesses are called.

I will gently point out with a smile on my face that perhaps this can move along more quickly and we will have a chance to get to the bankruptcy lawyers and Mr. Levenson and the judge all before we finish work on Thursday.

MR. TURLEY: Madam Chair, in terms of our allotted time, just to give the Senators a heads up on

this, the main four witnesses, we've gone through two of them. We have two more that have a big chunk of time, and then the time periods become much, much shorter. So we've got two more witnesses where both sides have a large investment in.

Can I raise one more issue, Madam Chair?

CHAIRMAN MC CASKILL: Yes.

MR. TURLEY: As the committee is aware, the night before the trial, we received additional discovery, and I want to thank the committee and the staff for trying to get the Department of Justice to release that information. I know that the staff worked very, very hard against a reluctant agency.

With that information came a letter from Ronald Wright, the assistant attorney general, and he stated that the Department of Justice would not be turning over memorandum, specifically on why Judge Porteous was not charged with a crime, and that letter actually states or concedes that they did turn over that same information in prior impeachments and concedes that, indeed, in the Nixon proceedings, they turned it over and makes a curious point, but there was a trial in that case, which in our view it's even more important as evidence when there wasn't a trial in a case.

What we would like to do is two things: Once

again ask the committee again to point out to them that this is a very conflicted, and we don't see a well-based reason to not turn over that evidence that was turned over to other accused judges. And second, we would like to enter this letter into the record as evidence as Porteous Exhibit 2005 so that at a minimum the letter should be in the case.

CHAIRMAN MC CASKILL: It was turned over in Nixon because of prosecutorial misconduct, and we have a subpoena under advisement as we speak.

Is there an objection to the inclusion of this letter as an exhibit?

MR. SCHIFF: There's no objection.

CHAIRMAN MC CASKILL: The letter will be included as an exhibit, and we are working on trying to get all of the information that we can.

MR. TURLEY: And we thank you for that, Madam Chair.

(Porteous Exhibit 2005 received.)

MR. SCHIFF: The House has scheduled a series of two or three votes at 6:00. We wouldn't need to leave until well into that 15-minute period, and we could come back thereafter, but I wanted to make sure the Senate was aware of that.

CHAIRMAN MC CASKILL: We would be happy to

accommodate your schedule in that regard. Are there several in a row?

MR. SCHIFF: The first will be a 15-minute vote, and we will have, I think, one or two others after that.

CHAIRMAN MC CASKILL: We will work with you to make sure you don't miss votes.

MR. SCHIFF: Thank you, Madam Chair.

CHAIRMAN MC CASKILL: You may call your next witness, Mr. Schiff.

MR. SCHIFF: The House calls Louis Marcotte. Whereupon,

LOUIS MARCOTTE

was called as a witness and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GOODLATTE:

Q Would you, please, state your full name.

A My name is Louis Marion Marcotte, III.

Q Mr. Marcotte, where do you live?

A I live in New Orleans, Louisiana.

Q And what do you do for a living?

A I have a clothing store called Italy Direct.

Q And what type of clothing is that?

A It's an Italian boutique that sells high-end clothing.

Q And tell the Senators a little bit about yourself. Where did you grow up?

A I grew up in a little town called Gretna, Louisiana. It's right on the other side of the river from New Orleans.

Q And what was your financial background growing up?

A We grew up pretty poor, me and my family. We had a two-room house with about six of us in it and, you know, we barely made ends meet.

Q What kind of education do you have?

A I have -- I graduated from high school, and I have one year of college.

Q And at some point in your life, did you go into the bail bonds business?

A Yes, I did, around 1979.

Q How did that come about?

A I went to work for a guy named Rock Hebert. He was a bondsman in the area. When he died, I opened up --

Q What did you do for Mr. Hebert?

A For Mr. Hebert, I was a janitor. I started there as a janitor, working cleaning his building and emptying the trash and stuff like that.

Q And at some point you came to start your own company?

A Yes. After he died, I saw an opportunity across from the Jefferson Parish Courthouse, and I opened an office there, and it was called the blue house.

Q Do you remember the approximate year?

A Probably around '82, '83.

Q And what was the name of your company?

A Bail Bonds Unlimited.

Q And did any other family members work there?

A Yes. My whole family worked there, my mom, my sister, my dad, and my other sister, Lisa, Lori and Lisa.

Q Your two sisters, Lori and Lisa?

A Yes.

Q So this was a mom-and-pop business starting out?

A Yes, it was.

Q And what did Lori do?

A Lori basically handled the controls of the business, meaning all the accounting, and she did sales as well, and basically, that's what I ran, too, the sales department.

Q Was Lori knowledgeable about the operations of the company?

A Yes, she was.

Q And did she work closely with you?

A She did, very close.

Q And by the late 1990s, what was the size of your

business?

A I was probably doing in dollars in the late '90s probably 6, 7 million in premium.

Q And by the time the business closed, what were you doing?

A Somewhere around 30 million.

Q And how many states were you operating in?

A About 34 states.

Q And how many employees did you have?

A I had 300 employees and 1,000 licensed agents in the field.

Q Describe your life in the bail bonds business. What was it like?

A In the beginning, for a very long time, I stood in front of the jail, and as the families went in to get bonds, I ran behind them.

Q So you worked long hours? Is that what you're saying?

A What's that?

Q You worked long hours?

A Yes. I slept in my car, and I slept in my office.

Q And why did you do that?

A Because when someone gets arrested, the families go to the jail first. So if you were parked out in front

of the jail and sleeping there, you will see the families walking in, and you can hustle them and bring them back to your office and write the bond.

Q Is it fair to say you were in the bail bonds business until about 2003?

A Yes, sir.

Q And were you put out of business as a result of a federal criminal investigation?

A Yes, sir, I was.

Q Let me step back here. Can you explain the bail bonds business to the Senate? In particular, can you explain how you, as a bail bondsman make money in the bail bonds business?

A Yes, I can. A bail bondsman is nothing more than an insurance agent, like a State Farm agent. We make a commission for selling a policy. The amount of money that you make determines the contract that you have with the insurance company. If you want to take all of the risk, you make 90 cents on a dollar. If you want to take half the risk, you make 50 cents on a dollar. In my case, I took all the risk and made 90 cents on a dollar.

Q So the magistrate would set a bond? Is that how it ordinarily would start?

A Yes, the magistrate would set the bonds every morning.

Q And then if the prisoner can't meet the bond, then he would work with a bondsman; is that correct?

A Yes, he would.

Q And how would that arrangement work?

A Well, you know, if I caught him at the jail at 3:00 in the morning, sat him in my office so I could get bond set before the magistrate --

Q If the magistrate set a bond for \$50,000, what would your arrangement be with the prisoner?

A I would ask the defendant or the family hey, do you have the 5,000 to get him out of jail.

Q Is that a standard rate, 10 percent?

A Yes, yes, it is.

Q And so did you have an interest in how high the bond was set?

A Yes, I did.

Q And how did that work?

A Well, you know, if the family had a \$50,000 bond -- I mean, if there was no bond and the guy could make a \$100,000 bond and I could get a \$10,000 fee out of it, I would ask for the highest bond that I could get.

Q So if the bond were set too high and the prisoner couldn't make it, did you make any money?

A No, I couldn't.

Q And if the bond were set really low or if the

prisoner were released on their own recognizance, would you make much money or any money?

A I couldn't make any money.

Q So again, as a practical matter, if a bond is set at \$100,000, how much will you make?

A With my contract with the insurance company, 9,000.

Q So the bond would be 10,000, and you would make 9,000. Where would the other \$1,000 go?

A To the insurance company. Now, remember, the insurance company was held harmless. I was liable for the 100,000. All they did was supply the paper for us to post at the jail. It wasn't real dollars. It's just paper.

Q In Gretna, Louisiana, in the 1990 to 1994 time frame, I want you to just walk the Senators through how bonds were typically set and what your day would be like. First, who would typically set the bond?

A The magistrate.

Q And then describe the circumstances when you would want to avoid the magistrate and go to a judge to set the bond?

A I would get the bond set before the magistrate came in in the morning, so he had no chance of getting released on a free bond.

Q If you were concerned the magistrate would

release him on his own recognizance, what would you do?

A I would go in and get a judge to set the bond so I could make the money.

Q If you thought the magistrate set the bond too high, what would you do?

A I would go tell a judge that would reduce it for me.

Q Were there times that you also needed access to a judge for competitive purposes because there were other bail bondsmen in the courthouse?

A Yes, there were plenty of times where we would go to the judge with the worksheet, "worksheet" meaning the request and the request that Bail Bonds Unlimited would ask the judge for. While the request was in the judge's office, we wouldn't have them call the bond in until we have an agent at the jail ready to Post-it so we wouldn't lose it.

Q And if you wanted to avoid the magistrate, could you go to any judge in the courthouse?

A Not any judge. At different times in those 20 years, it was different judges.

Q And when you would talk with a judge about a bond, would a prosecutor or a defense attorney be present?

A No, they wouldn't.

Q And every time a judge sets a bond for which a

prisoner could actually afford the premium, is that money in your pocket?

A Yes, it is.

Q Did there come a time that you met Judge Porteous?

A Yes sir, there was.

Q How do you recall meeting Judge Porteous?

A Well, I had a guy named Adam Barnett. His dad was a lawyer in the courthouse for a long time, and Adam had connections with a few different judges because of his father. And so Adam actually introduced me to Porteous and Rhonda, his secretary.

Q So he was another bondsman?

A He was another bondsman.

Q How did you form a relationship with Judge Porteous?

A By meeting Porteous and getting closer to him because Adam introduced me to him, then all of a sudden he started, you know -- he started spending more time with me than Adam.

Q And what kind of time was that? How would you spend that time with him?

A You know, dinners, lunches, more lunches than dinners, but lunch twice a week, something like that, several times a week.

Q Also, you started getting to know his secretary, Rhonda Danos; correct?

A I started what? I'm sorry.

Q Did you start to get to know his secretary as well?

A Yes, I did.

Q And over time, can you describe the frequency with which you took the judge to lunch?

A I would say several times a week, you know, two. I guess two would be a good guess.

Q And how would these lunches be arranged? Did you call him, or did he call you?

A In some cases he would call me. Some cases, I would call him. Some cases, we would call Rhonda, and she would set it up.

Q Was it just you and Judge Porteous?

A Not necessarily. Most of the time I had a group of people with me.

Q And who else would that be?

A I had Rhonda, I had a few people from my office. And if we can invite other judges or state reps or anybody who was connected with the criminal justice system, we would try to bring them to the table as well.

Q And did you include Rhonda?

A Yes, I did.

Q And did you let him bring or invite whoever he wanted to?

A Yes, I did.

Q And did Porteous -- Judge Porteous know that he was permitted to invite other persons?

A Well, yes. It was unspoken, but, you know, we were okay with anyone he wanted to bring.

Q And describe Judge Porteous's personality in a group situation like these lunches.

A A leader, very funny guy, very smart, too.

Q Did you want him to have a good time?

A I wanted him to have an excellent time.

Q Was it good for you to be seen with Judge Porteous?

A Yes, it was, because what it would do is, you know, it would make me look more like a businessman instead of a bail bondsman, because in the world of bail, the bail bondsman doesn't have a real good reputation.

Q And what was Judge Porteous's reputation as a former prosecutor and a judge?

A Well, he was known as a leader.

Q Describe these lunches. What happened?

A We would sit and drink and eat. We would talk about different things, but we would always talk about bail.

Q How long would they go on for?

A Sometimes an hour, sometimes two hours,
sometimes five hours.

Q All afternoon sometimes?

A Yes.

Q And lots of drinking?

A Lots of drinking.

Q And where would you take him? What kind of
restaurants would you take him to?

A Ruth's Chris, you know, the Beef Connection,
Salvatore's.

Q What types of restaurants were these?

A I'm sorry?

Q What types of restaurants were they?

A Kind of high-end restaurants, you know.

Q Like Ruth's Chris is a steakhouse --

A Yes, sir.

Q -- that may be known outside of New Orleans.
I'm familiar with Ruth's Chris steakhouse. Were the other
restaurants you took him to comparable to Ruth's Chris?

A In some cases they were. I can't remember ever
going to eat at a little sandwich shop, but it's been a
long time, too.

Q Sure. Did you enjoy these lunches?

A I did enjoy them. And then at some point, I

wasn't enjoying them anymore because I started sending other people to go.

Q Could you take all afternoon off and do this kind of thing? Was it a problem?

A In some cases I could; in some cases I couldn't; in some cases I didn't want to.

Q Okay. Do you have any sense for when these lunches started?

A You know, it's been several years. It could have been '94, '95. Again, it's been a long time.

Q Could it have been earlier than that?

A It could have been earlier than that.

Q Do you recall when you first met Judge Porteous?

A You know, again, some time in the '90s, and it might go to '89, you know, '88, but I don't think any earlier than that.

Q And did you start taking him to lunch not long after you first met him?

A Well, it took a little while, you know, maybe six months or something.

Q Okay.

A But --

Q By the end of Judge Porteous's tenure on the state bench, how frequently would you take him and others out to lunch?

A After he was on the state bench?

Q Well, by the end of -- before he became a federal judge, at the end of the time he was on the state bench.

A Just, you know, about twice a week, which would be a good guess.

Q And who paid for these lunches?

A BBU paid, I paid.

Q BBU meaning?

A Bail Bonds Unlimited.

Q Your company?

A Yes, sir.

Q How many times did Judge Porteous pay for lunch?

A That I can recall, none. He never.

Q Never?

A Never.

Q And when you would take Judge Porteous and a group out to lunch, in your mind, was the money you spent on that meal money money that you spent on Judge Porteous?

A I kind of looked at it as an investment.

Q And you were -- for whose benefit?

A For my benefit and, in some cases, his benefit.

Q Okay. And let me turn now to the subject of automobiles. Did you have anything to do with Judge Porteous's cars in the time period prior to 1994?

A You know, it's hard to say, the time frame, was it '93, '92, yes. What I can say is I fixed cars for he and his family.

Q And what do you mean by that, fixing cars?

A Tires, radios, transmissions, body work. Every time I took one of his cars, I filled it up with gas and washed it as well.

Q All right.

A I mean, I really wanted to make a statement, you know, when I did something for him.

Q And how did that start?

A It started with Adam Barnett bringing the keys.

Q Adam Barnett was the earlier bondsman?

A The earlier bail bondsman. He would bring the cars, and he wanted to share the expense. He would pay half, and I would pay half. I didn't have the contact with Porteous, but I was paying half. And then at some point, you know, I started paying the whole thing and kind of edged Adam out of the way, probably because I had more money and Adam was not as probably trustworthy of a guy.

Q And can you describe these cars?

A Yes. They were old and kind of beat up.

Q And how many cars are we talking about?

A We're talking about three, four cars.

Q Just for the judge himself?

A No, for his kids and him and, you know, maybe I repaired his wife's car. I'm not exactly sure about that. But I can actually say right now his kids' and his car.

Q And how did it come to your attention that these cars needed repairs, needed washing, and so on?

A Well, there were different times. Like if we would be at lunch, he would say Tommy's car is broke, and I would say judge, I will take care it. There would be times Rhonda would call and say the judge's car is broke, he wants you to come get the key.

Q And how frequently did you make repairs to the cars?

A You know, it's been a long time, but I'd probably say it could have been maybe once a month or once every three months. Again, it's been a long time.

Q Do you remember the names of some of the auto repair establishments that did the repairs?

A Yes. One of them was Tony Voo. I believe I put tires on his car at Uniroyal. Delta Electronics put a stereo in his car. There was different mechanics that I got it worked on, carburetors and mechanical problems, transmissions. I think there's a transmission shop on Manhattan Boulevard. I don't remember the name, but I think we put a -- I know we put a transmission in one of his cars from that place or rebuilt one.

Q Who is Jeff Duhon?

A Jeff Duhon is my brother-in-law.

Q He was married to Lisa?

A He was.

Q Did he work for you?

A Yes, he did.

Q And who is Aubrey Wallace?

A Aubrey Wallace was another guy who worked for me.

Q And did Wallace have a nickname?

A Skeeter.

Q So did Jeff and Skeeter have anything to do with taking care of Judge Porteous's cars?

A Yes, at that point in my life Jeff and Skeeter was kinda -- I didn't ever want to leave the bail office, because I wanted to sell. So Jeff and Skeeter were kind of my runners.

Q What do you mean by "runners"?

A You know, repair the cars, fix stuff, anything that would not get me out of my office because I didn't want to lose a sale.

Q Did Judge Porteous ever tell you directly that he needed car work?

A Yes, I've been at lunch with him when he would say look, Tommy's car needs to be fixed, here's the keys.

Q Who paid for the repairs?

A I did.

Q Did Judge Porteous ever reimburse you?

A No, he never.

Q Did there ever come a time that you provided home repairs to Judge Porteous?

A Yes. A storm, some of his fence blew down, and I sent Jeff and Aubrey, which is Skeeter, to do the repairs on the fence.

Q Do you recall whether Jeff had to purchase construction materials?

A Yes, he did.

Q And I think you stated in 2004 that you thought Jeff may have paid \$200 for the boards. In your mind, would Jeff have a better sense of how much he spent?

A I think Jeff would know more because I was so involved with so many other things that, you know, boards on the fence wasn't really a priority in my life at that time.

Q Did Jeff and Skeeter actually do that work?

A Yes, they did.

Q In or about 1993 or 1994, did you ever have occasion to arrange a trip to Las Vegas with Judge Porteous?

A Yes, I did.

Q Do you recall how that came about?

A Well, I kind of wanted to get closer to him, and I figured if we went on a trip together, you know, it would build a better relationship, a closer relationship.

Q And do you recall what year that was?

A You know, if you say it's '94 or '93 -- I mean, I don't know exactly, because it's been a long time, 20 years now almost.

Q Who went on that trip? Do you recall?

A Two of my buddies at the time, and still my buddies, Phillip O'Neil and Bruce Netterville, two lawyers, me, and there was a few other people. I think maybe one or two of Porteous's friends, too, and Judge Giacobbe.

Q And Judge Porteous?

A Yes.

Q And you think some of Judge Porteous's friends?

A Yes.

Q And why were the lawyers invited?

A Well, again, the stain that the bail bonds industry has at a national level, I wanted to mix some lawyers in there so it wouldn't look so bad with him going to Las Vegas with me without some lawyers.

Q And who invited the lawyers?

A I invited the lawyers, telling them look, hey, let's go to Las Vegas with Porteous, we can develop a

closer relationship with him if we, you know, wine and dine him and treat him.

Q And do you think it included Bruce Netterville?

A Yes, it did.

Q Who paid for that trip?

A Bruce, Phillip, and myself.

Q And how did you pay for the trip?

A Well, between my office and Bruce and Phillip, we rounded up enough cash to pay for his trip to Vegas, and then we gave the cash to Rhonda, who deposited it in her checking account and cut the checks for his Vegas tickets.

Q "Rhonda" being Judge Porteous's secretary, Rhonda Danos?

A Yes, sir.

Q Why was the payment for the trip arranged in that fashion?

A Because we were trying to hide it from the world.

Q And what do you remember Judge Porteous doing in Las Vegas?

A The whole time, he drank and gambled.

Q Let me turn to the real question. Why did you do all of this for Judge Porteous?

A Because I wanted to better my business and be able to get the bonds done.

Q And how did Judge Porteous help you make money?

A Several different ways. He helped me make money with bonds. He helped me make money by grooming other people to help me.

Q So let's talk about the bonds first. When you say he helped you make bonds and that helped you make money, what did he do in particular that helped you?

A He was available to me to do bonds at my request.

Q And when you say "do bonds," would this be a situation where the magistrate hadn't set the bond or had set the bond too high?

A Yes. It would be cases that the bonds were too high, cases that the bonds weren't set at all.

Q So you could go to him to set bonds?

A Yes, I could.

Q Did you go to him for anything else with regard to bonds?

A Just to reduce and set.

Q And describe to the members how you would have Judge Porteous set bonds?

A We had some worksheets, and what we would do is the worksheet would have the request of what the defendant could make in a bond. We would get the bond set to the amount that the defendant could make.

Q And would you go to his chambers, or how would you do this?

A There would be different ways. We would go to his chambers. We would drop him off with Rhonda. We would call at the house. Basically, sometimes at lunch, you know, he would approve the worksheet, and Rhonda would take the worksheet back to the Court and call the bond in.

Q Did you ever need to get in touch with him when the court was not in session, like at night or over the weekend?

A Yes, I did.

Q And how did you do that?

A Call him.

Q Call him on the phone?

A Yes, sir.

Q And describe how that would happen.

A Hey, Judge, I've got this bond, if you could see fit in setting it, this guy could make 100,000.

Q Was Rhonda Danos important to you in dealing with Judge Porteous?

A Yes, she was the gatekeeper.

Q Describe what the conversation was like between you and Judge Porteous about setting bonds. What would you tell him?

A If I didn't have a worksheet or if I had a

worksheet, I would say Judge, this is the kind of bond that the defendant can make.

Q Was it important to you to tell him this was the amount of money that the defendant could afford?

A Yes, it was, because the bond that I would ask for would maximize the profits of my company.

Q And when you went to him to set the bond, you would have the amount in mind to set?

A Yes, I would.

Q And how would you know what the person could afford?

A There was a few ways that we would know. We would qualify, take an application, run credit reports to see if he was financially able to pay a certain amount of bond.

Q The most important thing to you was how much they could afford to pay, not how much it would be likely they would have to put up for a particular crime? You were looking to maximize your return, and that was based upon what?

A Profits for our company.

Q Right. And what's the maximum profit you could make from an individual prisoner?

A By being able to post a bond and get 10 percent.

Q And what would be the maximum amount that you

would pay?

A I don't know if I understand the question. 10 percent.

Q Okay. The information you gathered from the credit records, from the interviews, from talking to family members, allowed you to ascertain how much money they had?

A Yes, sir.

Q How would you utilize that information in setting the bond?

A Well, as far as the credit report, you get the history of someone's credit.

Q Once you had all that information and you knew how much money they could gather --

A Absolutely.

Q -- what would you do with that?

A I would set the bond -- either reduce the bond or set it to the amount that the defendant could make.

Q In your conversation with Judge Porteous, did you ever specifically tell him what the prisoner could afford?

A Yes, I could. I would always say hey, judge, if you could see fit in setting this bond, this is what I would like to have it set.

Q Just to be clear, you would on occasion tell Judge Porteous, Judge, he can only make a \$5,000 bond or a

\$10,000 bond or whatever?

A Yes.

Q Was Judge Porteous aware that when he set bonds at your request that he made money?

A Anyone that didn't, they would have to be an idiot not to know.

Q So you went to all the judges to set bonds; correct?

A Yes -- not all of them, most of them.

Q Were there particular bonds that you went to Judge Porteous to set for you?

A Yes.

Q What were they?

A Fugitive bonds, probation bonds. Probation bonds that other judges didn't want to set them, that it wasn't their case. A fugitive bond, do you want me to explain --

Q Explain why you would go to Judge Porteous when you were having another judge that was handling the case.

A On some cases -- I would go because I could get it done with him. There were some judges I knew I couldn't get it done. So what I would do, if somebody had a fugitive bond or extradition bond and was wanted in Washington on a burglary, I would set a fugitive bond for them in New Orleans, and the guy could get released in

Jefferson, and then they would have a hearing in Jefferson to determine whether he has to come back here or not. But it would actually get the defendant out.

Q You -- sorry. Tell the Senators what split bonds are.

A A split bond is -- let's say the judge sets a \$200,000 bond on a guy. The family -- we do credit reports. We see what they can make. If they can make 100, well, the bond's 200. Well, if we only get 10,000 on a 200, we don't make any money because -- there's other fees that are at the jail. On bail, they've got a 40 percent tax at the jail. So by the time I paid the insurance company and by the time I paid the surety company, I wouldn't have any money, and I would have the liability.

So what I would do is get a family member to come in. It's called unsecured surety. I would have a family member come in. He could be Joe Blow worth zip. But as long as he has a valid ID, he signs for 100,000 on his name, and then we post a 100,000 commercial bond.

Q So if he only had \$10,000 you could maximize that 100,000, and the other 100,000 would be on somebody's surety?

A Yeah, unsecured surety, basically a promissory note that in most cases was worth nothing. And then 100,000 commercial was worth 100 grand.

Q Was it helpful for you that Judge Porteous was willing to split and reduce bonds that other judges weren't?

A It was very helpful, because there was hardly anyone that we couldn't get out of jail.

Q Did you ever talk about bond setting on the days that you took him to lunch?

A Yes, I did.

Q Before, during, and after lunch?

A Yes. We showed up with worksheets for lunch, you know. Not in the beginning, but as our relationship grew, then we started bringing the worksheets to the table. And Rhonda would be there. He wouldn't call them in from the lunch table, but he would approve them, and then when Rhonda would get back with five, six, 10 worksheets, then she would call the jail.

Q And would you go back to his chambers after lunch?

A Yes, I would go back to his chambers. If I didn't see him, I would see Rhonda and see if he did the bonds, and most of the times, they were done.

Q So let me be clear. Let's say you would drop \$100 or \$200 for lunch. Right there at the lunch, you could talk to the judge about bonds or go back to his chambers after lunch --

A Yes.

Q -- and get him to sign bonds?

A Yes.

Q Did any of the conversations concerning repairs to his car occur in his chambers when he was setting bonds?

A I think more at the lunch table, you know, here's Tommy's keys or the car's broken again or Rhonda would call. But after she called, maybe 10 minutes later, we would call and say hey, judge, can you do this bond. He was a little more apt to do things when I was fixing cars and we was going to lunch together.

Q I previously asked you about Jeff Duhon. When he first started working for you, what did he do?

A He kind of started like I did in the bail bond business as a janitor, cleaning up, running all my errands, you know. I only had so many errands to run, but I did have a lot. So it wasn't a full-time job, so I wanted to work him in the bail office. So at some point he started answering the phones and waiting on people to roll out of jail. When someone rolls out of jail, we have to bring them back to the office and take a picture and everything like that. So it became advantageous to me to get him licensed.

Q When Jeff first worked for you, could he write bonds?

A No, he could not.

Q Why not?

A Because he had a conviction --

Q What was the conviction?

A I believe it was a burglary.

Q It was a felony conviction?

A Yes.

Q Why would that prevent him from writing bonds?

A Unless the commission insurance approves it, you cant be convicted of anything, and I knew that I couldn't get the commissioner to waive it. So we thought it would be easier to get the conviction set aside and have his record expunged.

Q Is there anything did you to help Jeff and to help your business deal with the felony conviction?

A Yes. What I did was -- I can remember clearly, Jeff's case was not allotted to Porteous. It was allotted to another judge. So another judge had Jeff on probation. So I wanted to get Porteous to talk to that judge to see if he would expunge and set aside Jeff's conviction so he could become a bondsman.

Q And do you know whether Judge Porteous did that? Did he expunge it himself?

A He said he asked the judge. I don't know, because I wasn't there. But at some point, he set aside

the conviction --

Q Judge Porteous did?

A Yes, he did, and he expunged his record.

Q And did you personally have a conversation with Judge Porteous concerning that request?

A Yes. To be honest with you, I rode hard on him, you know, for maybe a couple months, hey, when are you going to do it, when are you going to do it, when are you going to do it, and at some point he did it.

Q How certain are you that Judge Porteous expunged Jeff Duhon's conviction at your request?

A Well, I was able to get him a bail license.

Q Was there anything about that action by Judge Porteous that stands out as particularly unusual?

A Yes, because he set aside a conviction and he expunged a record on another judge's case.

Q Whose case was it?

A I believe -- I think it was Richards' case, Judge Richards.

Q And why do you recall that?

A Because again -- I think it was Judge Richards, but it was definitely another judge's case.

Q Now, let me turn to the summer of 1994. Were you ever made aware that Judge Porteous was under consideration to be nominated as a federal judge?

A Yes, I was.

Q Were you ever interviewed by the Federal Bureau of Investigation, the FBI, as a part of that background check?

A Yes, I was.

Q In connection with your testimony, has your memory been refreshed on how many times you were interviewed?

A Yes, it has.

Q And how many times were you interviewed?

A I was interviewed twice.

Q Did Judge Porteous know you were going to be interviewed?

A Yes, he did.

Q How do you know that?

A Because he told me that they were coming to interview me.

Q And you've been asked about what you said on the background check on prior occasions. First, the FBI agents' write-up of the background check reflects that you said -- and we have a slide to pull up here. So taking these sentences one at a time, the first sentence refers to alcohol, and it reports you as saying that "the candidate will have a beer or two at lunch." That's referring to Judge Porteous.

Was that a true statement?

A No, that was a false statement.

Q Why was it false?

CHAIRMAN MC CASKILL: For the record, would you indicate what exhibit it is you're referring to?

MR. GOODLATTE: I'm sorry. It is a part of Exhibit 69B.

CHAIRMAN MC CASKILL: Thank you.

MR. DUBESTER: Senator, if I may, 69B, there's a Bates number, too. It's PORT 472, and Exhibit 69B is the background check file.

BY MR. GOODLATTE:

Q So we were talking about why you knew the statement you made that he had a beer or two at lunch was false. How did you know that was false?

A Because I watched him drink five, six, seven Absolut straight up.

Q Why would you lie for him?

A Because through the years, he was good to me, and I wanted to see him get his federal appointment. At that point, we still had time left with him. If I would have told the truth -- I wouldn't have had any reason to tell the truth. He's been good to me, and I wanted to see him get what he wanted.

Q The second sentence states that you have "no

knowledge of the candidate's financial situation."

Was that the truth?

A No, that wasn't the truth, because you could tell by his surroundings with the cars, and they were old and they were broken, and you could see that he was having financial problems.

Q Did he have some lifestyle issues?

A Yes, he did. He gambled a lot and drank.

Q And did know that those were costly to him?

A Yes, I did.

Q Why didn't you tell the FBI that you knew Judge Porteous had financial problems?

A Because again, you know, I wanted him to be confirmed. I was trying to protect him, and I wanted him to get his lifetime appointment.

Q The third is the sentence that reports that you were "not aware of anything in the candidate's background that might be the basis of attempted influence, pressure, coercion, compromise, or that would impact negatively on the candidate's character, reputation, judgement, or discretion."

Do you see that?

A I am aware of that.

Q You were aware of everything you just testified to; correct?

A Yes, sir.

Q And you knew that your own relationship was improper, didn't you?

A Yes, I did.

Q You knew you couldn't take a judge to Las Vegas, didn't you?

A Yes, I did.

Q And during the time of those interviews, you were deliberately hiding the full extent of your relationship with Judge Porteous?

A Yes.

Q Why?

A To protect him, and to protect myself, too.

Q And then on a separate interview, you were asked about a particular case called the Keith Klein case.

Do you recall that?

A Yes, I do.

Q And that involved an allegation that Judge Porteous received money from an attorney to lower bail in that case; is that right?

A Yes.

Q And did you have firsthand knowledge of the allegations?

A Not firsthand, but yeah, the lawyer told me that Keith Klein was in his office and that he felt like he was

wired and he was asking him questions about money.

Q "The lawyer" being whose lawyer?

A The lawyer who got the bond reduced.

Q In your two interviews with the FBI, what was your motive?

A To make sure Porteous got his lifetime appointment.

Q And did you feel you were telling the FBI what Judge Porteous wanted you to tell them?

A Yes, I did.

Q Did you feel that your interview with the FBI was a part of the relationship that you described where you would do things for him and he would do things for you?

A Yes.

Q Did you have conversations with Judge Porteous after either or both of those interviews about the interviews?

A Yes, the conversation before when he told me they were going to come to see me, and two or three other times when we went to lunch, we talked about, you know, what they asked and, you know, I guess asked me two or three times just to make sure everything was clarified.

Q What did you tell him you told the FBI?

A Thumb's up.

Q Also in the summer of 1994, do you recall making

any requests of Judge Porteous regarding Aubrey Wallace?

A Yes, I did.

Q What do you recall asking Judge Porteous?

A I said Judge, could you get this guy's record expunged so he can become a licensed bail agent.

Q And do you recall having one conversation or more than one conversation on that topic?

A Again, I rode herd on him till I could finally get him to do it.

Q And do you recall Judge Porteous's response?

A He kind putting me off, putting me off. And he said look, Louis, I'm not going to let anything stand in the way of me being confirmed and my lifetime appointment, so after that's done I will do it.

Q Did he say why he wanted to put it off until after the confirmation?

A Again, he didn't want anything to get in the way of his lifetime appointment.

Q What kind of things could get in the way?

A If the government would have found out some of the things that he was doing with me, it would probably keep him from getting his appointment.

Q And would there be a public record of that?

A Yes, there would. It would come out in the newspaper or --

Q In fact, did Judge Porteous do what he said he would do?

A He did.

Q Did he set aside Wallace's burglary conviction?

A Yes, he did.

Q And was it after he was confirmed by the Senate?

A Yes, it was.

Q Did you understand this as something that he did for you or something he did for Wallace?

A It was something that he did for me.

Q Was this something that was worked out between and you Judge Porteous?

A Yes, it was.

Q Just so it's clear, if Judge Porteous could not have helped you as you testified in setting bonds, taking other judicial actions, lending prestige with others, would you have taken him out to lunch to the extent you did?

A No, I wouldn't have.

Q Would you have taken him to Las Vegas?

A No, I wouldn't have.

Q Would you have repaired his cars?

A No, I wouldn't have.

Q After Judge Porteous was confirmed as a federal judge, could he still help you in the same ways he did before as a state judge?

A No. He could help me, but not in the same way as far as reducing bonds.

Q He could not set bonds for you. Did you go to Judge Porteous and ask him to help you with the rules in U.S. District Court regarding the issuance of commercial bonds?

A Yes. There is a Magistrate Louie Moore. I asked him would you talk to Louie Moore because in federal court they were taking a lot of 10 percent deposits. That means you put up 10 percent with the courts, and you eliminate the bondsman. I asked Porteous to see if he could get Louie Moore to change the bonds from commercial bonds. He told me he went to him, but did he really, I don't know. I had that conversation with him.

Q Did you attempt to maintain a relationship with Judge Porteous even after he became a federal judge? Did you continue to have lunch with him?

A Yes, I did.

Q Why?

A Because I thought it would be important to have a federal judge sitting next to me, and if I brought people to the table, he would bring strength.

Q Did you want Judge Porteous to help you recruit a new judge?

A Yes, I did.

Q Were there times that you arranged lunches with and you Judge Porteous and other people who you wanted to impress?

A Yes, I did.

Q Did you make any requests of Judge Porteous relative to Judge Bodenheimer?

A Yes, I did.

Q What did you ask Judge Porteous about Judge Bodenheimer?

A I talked to him that I would like him to step into his shoes.

Q So Judge Porteous is now a federal judge. Judge Bodenheimer is a state court judge?

A Right.

Q To your knowledge, did Judge Porteous say anything on your behalf to Judge Bodenheimer?

A I think he did, or he told me he did.

Q After Judge Porteous told you that he spoke to Judge Bodenheimer, how did your relationship with Judge Bodenheimer develop?

A Well, it got stronger. Now, I had a relationship with Bodenheimer a little bit before Porteous, but Porteous actually made it stronger.

Q In what respect?

A Because again, he was a leader and has always

been a leader. Everyone follows a leader.

Q Did he become more helpful in setting bonds?

A Yes, he was.

Q Did you start doing things for Judge Bodenheimer?

A Yes, I did.

Q What did you do for him?

A I did some repairs on his house and basically started taking him to dinners and lunches and made one trip to the Beau Rivage with him.

Q Beau Rivage is what?

A It's a casino on the Mississippi.

Q I think we mentioned that in 2002 you were under criminal investigation; is that correct?

A Yes, sir.

Q Were you aware that you were under surveillance?

A No, sir.

Q Have you seen the FBI's surveillance tape of you entering Emeril's restaurant?

A Yes, I did.

Q Is your recollection -- when you viewed it, did you view it as being an accurate tape?

A Yes, sir, it's accurate.

Q And who went to lunch that day?

A Joan Benge.

Q And she was?

A She was a state judge.

Q Okay.

A Steve Donnes, Porteous, myself. I think Bodenheimer was there and --

Q Was Judge Benges's secretary there?

A Yes, Sadie.

Q What was the purpose of the lunch?

A Grooming.

Q Who?

A More grooming with Bodenheimer and to groom Benges.

Q And who invited Judge Porteous?

A My secretary, my administrator would have called Rhonda and invited her.

Q Again, he was a federal court judge at this time; is that right?

A Yes, sir.

Q And why did you want Judge Porteous there?

A I wanted him to talk about bail and how good it is for the system and, you know, so she would start doing bonds. After Porteous left, I needed as many people as I could to fill in that gap.

Q And what purpose did Judge Porteous fulfill in that lunch?

A Again, by being a leader and talking about bail and how good it is for the system, a state judge sitting with a federal judge, you know, it's -- it brings some power to the table.

Q Let me show you the receipt from that lunch. Do you recognize it?

A Yes, sir.

Q I'm going to blow it up here for you.

A That's my signature.

Q How much was it for?

A \$414 --

MR. GOODLATTE: First of all, Madam Chairman, I would ask that this be identified as House Exhibit 375.

CHAIRMAN MC CASKILL: The exhibit will be so identified in the record.

BY MR. GOODLATTE:

Q And how much was it for?

A \$414.29.

Q Do you also see the restaurant check, which I think is the other half of that?

A Yes, sir.

Q Is there anything on the check that confirms in your mind that Judge Porteous was present?

A Yes, the absolute.

Q I'm going to show you a videotape now. As I do,

I want you to simply identify who is on the screen who you can identify, and Madam Chair, this is House Exhibit 48.

(Videotape played.)

THE WITNESS: That's Joan Benge's car. That's Judge Porteous.

BY MR. GOODLATTE:

Q That's Judge Porteous on the right?

A Yeah, and that's Sadie, Judge Benge's secretary. There I am, Steve Donnes, and Bodenheimer, Judge Benge.

Q Judge Benge is the last one coming out there?

A Yes, sir.

Q Now, let me show you House Exhibit 241, which is a still photo from that videotape. Who are the four persons in that photo?

A That's Steve, me, and Bodenheimer. I really can't see who those two are to the right.

Q Is that Judge Porteous?

A Porteous, me, and Bodenheimer. I don't know. It's kind of blurry from here.

Q But you do see yourself?

A Yes, sir.

Q You do see Judge Bodenheimer?

A Yes, sir.

Q And you do see Judge Porteous?

A Yes, sir.

Q Now, in February of 2004, was it public knowledge that you were under investigation?

A Yes, sir.

Q At some point did a request come to you from Judge Porteous's lawyer?

A Yes, sir.

Q What was that request?

A He kept calling me, and he wanted me to sign a document that said that Porteous didn't take anything of value from me.

Q Let me show you House Exhibit 280. We're going to blow that up so you can -- do you recognize your signature on that document?

A Yes, sir.

Q What is that document?

A That is an affidavit saying that he didn't take anything of value for moneys or any type of quid pro quo action, and I signed that.

Q Who prepared that affidavit?

A Porteous's lawyer, Kyle Schonekas.

Q Let's go through the paragraphs briefly. Paragraph 3 says "at no time have I ever given anything of value to Judge Porteous for reducing or altering any bond."

Do you believe this to be true at the time you signed it?

A Completely false.

Q Yet, it was prepared by Judge Porteous's attorney?

A Yes, sir.

Q In what way is that not true?

A Because all of the meals and the cars and the wining and dining, the trips, all that was for him to do bonds.

Q Why did you sign this if it was not true?

A Well, I was trying to protect him.

Q And the rest of this document has to do with the Keith Klein bond case, which we referred to earlier. That was the subject of the confirmation check inquiry, wasn't it? The FBI was interested in that?

A Yes, sir.

Q Do you know why that was included?

A Because he thought maybe I knew something about that he was taking money from the lawyer. I mean, I can't read it. So --

Q Did you make this false statement to help Judge Porteous?

A Yes, I did.

Q And just like you made false statements in connection with the background check?

A Yes, sir, I did.

Q Was this simply a continuation of the same relationship you described that had its roots back in the 24th JDC in the state court where you did things for him and did he things for you?

A Yes.

Q Ultimately, did you plead guilty to a federal corruption offense?

A Yes, sir, I did.

Q Let me show you Exhibit 71A, the information that you pleaded guilty to. It charges that on or about a certain date beginning prior to 1991, you commenced in a conspiracy with certain named persons and persons known and unknown to the grand jury.

Going back to 1991, who did you have a corrupt conspiratorial relationship with?

A Porteous.

Q Just to be clear, you pleaded guilty to having a corrupt relationship with Judge Porteous, among others; is that correct?

A Yes, sir.

Q And the conspiracy charges describes not only the things you gave judges, but it also describes the conduct of the judges as follows:

"3, It was a further part of the conspiracy that in return for things of value certain judges would make

themselves available to BBU, quickly respond to the requests of BBU," Bail Bonds Unlimited, "and set, reduce, increase and split bonds to maximize BBU's profits, minimize BBU's liability, and hinder BBU's competition.

"4, It was a further part of the conspiracy that to allow BBU to maximize profits, the conspirator judges would engage in the practice of bond splitting. At BBU's request, the conspirator judge would set the commercial portion of the bond at an amount the defendant could afford and would set the balance in some other manner. BBU would then post the commercial portion of the bond and collect a percentage of that bond as commission. This practice allowed BBU to maximize its profit and minimize its liability."

Is that a fair description of the conspiracy to which you pleaded guilty?

A Yes, it is.

Q Finally, did you go to jail for things you gave judges?

A Yes, I did.

Q What was your sentence?

A 37 months.

Q That's Exhibit 71E, page 2.

Was that reduced?

A I did the drug program, and I did 18 months in

jail.

Q Did you lose your job over this?

A Yes, I did.

Q You lost BBU over this?

A Yes, I did.

Q Let me make sure I understand this. You can no longer be in the bail bonds business because you corruptly gave things to public officials?

A Yes, sir.

Q But at least one public official who received those things remains on the bench; is that correct?

A Yes, sir.

MR. GOODLATTE: No further questions.

CHAIRMAN MC CASKILL: Mr. Turley.

MR. TURLEY: Thank you, Madam Chair.

CROSS-EXAMINATION

BY MR. TURLEY:

Q Good morning, Mr. Marcotte.

A Good morning to you.

Q We've met before. My name is Jonathan Turley, and I did your deposition earlier.

A Yes, sir.

Q Let's just start with some basic questions so that we can just clarify the record. Most of these questions are yes or no, but feel free to answer them as

you wish.

A Okay.

Q You never gave cash directly to Judge Porteous at any time, did you?

A Not directly.

Q Did you -- and you never gave a campaign contribution to Judge Porteous, did you?

A No, I did not.

Q And once Judge Porteous became a federal judge, you never -- he never set a bond for you, did he?

A No, he did not.

Q And you testified earlier that Judge Porteous never gave you a kickback -- or that you never gave Judge Porteous a kickback on bonds; isn't that correct?

A Not in cash.

Q Now, let me ask you -- you were talking about the bond process, and some of us are familiar with that process, some of us may not be.

A Yes, sir.

Q Isn't it true that, in your experience, that if a district attorney or assistant district attorney objected to a bond, that generally the judges would reject the bond?

A Yes, sir.

Q And wasn't it your experience with Judge Porteous as well?

A Yes, sir.

Q And wasn't it your experience that if a district attorney or assistant district attorney objected to an expungement, generally the judges in Gretna would deny the expungements?

A Yes, sir.

Q And wasn't it your experience with Judge Porteous as well?

A Yes, sir.

Q Now, in 1993 and 1994 -- we've been talking a lot about that period -- how many bondsmen were working in Gretna?

A I'd say maybe three, four agencies.

Q Two or three?

A Two or three.

Q And you previously testified that even if two or three bondsmen, you were handling 90 percent of the bonds or more; correct?

A You know, it's a long time ago, and, you know, I would say probably 90 percent of the bonds.

Q Now, during that period -- well, first of all, let me ask you, would it surprise you going earlier, for example in 1986, would it surprise you to learn that in that given year there were more than 3,200 bonds that passed through the Gretna courthouse?

A No, it wouldn't surprise me.

MR. TURLEY: Madam Chair, I would like to introduce a CD of bonds that we previously gave to the committee, previously gave to the House. This CD is marked Porteous Exhibit 2001 as evidence. We will be referring to it.

CHAIRMAN MC CASKILL: Any objection?

MR. SCHIFF: Madam Chair, if I could have a moment. Madam Chairman, we have no objection.

CHAIRMAN MC CASKILL: The exhibit will be received into the record.

(Porteous Exhibit 2001 received.)

BY MR. TURLEY:

Q Now, would it surprise you, Mr. Marcotte, to learn that in one of those months, September 1986, there were 51 bonds signed by Judge Porteous?

A It wouldn't surprise me.

MR. TURLEY: Madam Chair, we have separated out those bonds. We referred the committee earlier to those bonds in the opening statement. We would like to go ahead and mark those as Porteous Exhibit 2002.

CHAIRMAN MC CASKILL: Without objection.

(Porteous Exhibit 2002 received.)

BY MR. TURLEY:

Q Would it surprise you that in February of that

year Judge Porteous signed 41 bonds?

A Of what year?

Q Of 1986.

A No, it wouldn't surprise me.

MR. TURLEY: Madam Chair, we have separated out those bonds for ease of the record. We are marking that as Porteous Exhibit 2003.

CHAIRMAN MC CASKILL: The record will note.

(Porteous Exhibit 2003 received.)

BY MR. TURLEY:

Q Mr. Marcotte, would you be surprised to learn that in December of that year, 1986, that Judge Porteous signed 29 bonds?

A No, it would not surprise me.

MR. TURLEY: And that's our final exhibit in this series. We have marked that as Porteous Exhibit 2004, Madam Chair.

THE WITNESS: Could I ask, what do you mean by "signed"? Could I ask what do you mean by "signed"?

BY MR. TURLEY:

Q That he was the judge that approved those bonds.

A Released them on those bonds or just set them?

Q That he signed them, approved the bonds. He was the judge who had signed those bonds.

A And they were released on his signature?

Q Presumably, that's what's in the record.

A Okay.

Q And those have been marked Porteous Exhibit 2004, and of course, we are offering these to be introduced into evidence.

CHAIRMAN MC CASKILL: Without objection.

(Porteous Exhibit 2004 received.)

BY MR. TURLEY:

Q I'm trying to get an understanding of what the situation was like in Gretna. During this period, certainly all the period that Judge Porteous was a judge, wasn't Jefferson Parish under a court order for overcrowding?

A Yes, sir, they were.

Q Now, that was a pretty strict court order; right? Didn't it require mandatory releases of prisoners?

A Yes, sir, after the jail got to a certain capacity.

Q And it was at that capacity for most of that period, wasn't it?

A Yes, sir.

Q And isn't it true that during many parts -- many months and years, that as soon as people were brought in to the overcrowded prison, people have to be released to satisfy that court order?

A Yes, they did.

Q And this was a big concern for judges in Gretna, wasn't it?

A Some.

Q Some didn't care?

A Some didn't care. Some of them just wanted -- they didn't want to put their name on anything. So they just set the bond real high.

Q Wasn't it a problem that many of the judges discussed that many of the prisoners who were released on mandatory court orders of overcrowding disappeared?

A Yes, sir.

Q Now, isn't it your experience that the chances that a person will return to the Court after release is higher if they have a bond on them?

A Yes, it is, sir.

Q Why is that?

A Because they have someone hunting them.

Q You; right?

A Right.

Q Otherwise, if a guy like you is not looking for these guys, what usually has to happen for these bail jumpers to be caught?

A If they get pulled over at a traffic stop, then they arrest them.

Q So it's pretty much accidental; right?

A Yes, sir.

Q And the police in Gretna, like other cities, they didn't regularly go look for bail jumpers; right?

A In some cases they did, but most of the time not.

Q Most of the time not. Thank you. And would you say that the higher a bond was set, the more likely someone would be to come back to court?

A Yes, sir.

Q Now, we had talked about this idea of a magistrate judge, and I just want to clarify something, because once again people may not be familiar with it. A magistrate during that period was a judge; correct?

A Yes. An appointed -- in some cases, an appointed lawyer.

Q But during this period, wasn't the magistrate system a judge that was selected to serve for a week to handle bonds?

A Yes, sir.

Q So this was done by rotation; corrects?

A Yes, sir.

Q A lot of judges didn't like that duty, did they?

A Yes, sir, they didn't.

Q In fact, a lot of judges had reputations for not

being available, didn't they?

A Yes, sir.

Q If they weren't available as a magistrate judge, you couldn't really get anything done, could you?

A No, sir.

Q And wasn't it true that it was common for bondsmen, if they couldn't find the magistrate, to try to find another judge; isn't that true?

A Yes, it was.

Q In fact, isn't that sometimes called bond shopping?

A Yes, sir.

Q When a bondsman was bond shopping, wouldn't they go to the courthouse to try to see who was available in the courthouse?

A Yes, sir, they would.

Q And you did that; right?

A Yes, sir.

Q Isn't it true, you testified earlier, that sometimes you would go into the courthouse to see which door was open or which judges were still there?

A Which judges would, you know, be acceptable to let me in.

Q Now, didn't you testify earlier that Judge Porteous was viewed as one of the more experienced judges

in dealing with criminal platters?

A Yes, a leader.

Q Now, isn't it correct that sometimes when you went looking for a judge, you went to judges other than Judge Porteous; right?

A Yes, sir, I did.

Q Let's talk about these split bonds for a second. Was Judge Porteous the only judge to split bonds in Gretna?

A No. There were other judges as well.

Q Are split bonds illegal?

A No, sir, they're not.

Q Split bonds are pretty common, weren't they?

A Yes, sir, they are.

Q A lot of judges thought they were a good idea; right?

A Yes, they did.

Q And a lot of split bonds prosecutors didn't object to; right?

A No, they did not.

Q Now, I think part of the value of your testimony is to try to educate people like Mr. Goodlatte did on this process. Now, isn't it true that sometimes a bond is initially set too high because of the original charges in the case?

A Yes, sir. For a number of reasons, they set

them high.

Q But isn't it true that if someone -- someone could come in on a very serious charge, but the actual charge that they're being held for for trial is much lower; isn't that true?

A Yes, sir. Sometimes they throw out some charges.

Q So often, the bond is set with an original charge that may have been reduced or dropped; correct?

A Like an example, if he got three charges, the guy is charged with burglary, resisting arrest, and public intimidation, the DA might toss two of them out, and you will have one bond for 2,500, and the other two bonds may have been -- so the total bond may have been 7,500.

Q In a case like that, let's say a guy gets pulled in. He's charged with a large possession weight of drugs, and a stolen car, and the bond is set for that.

A Okay.

Q If they drop the drug and possession and just go with the stolen car, you've got a bond left that's too high; right?

A Yes, sir. Well, actually, that bond just goes away, because when they screen it, they throw that charge out, and that bond is exonerated at that point.

Q But there's a need for the bond for that guy to

be lower than the original bond, so that judges generally reduce the bond when the charges were reduced; correct?

A Yes, they would, but in most cases, the bonds were set, and then it goes through a screening process, and then they toss the bonds out.

Q Let me just ask --

A The charges out.

Q I think I can clarify with the next question. Isn't it true that some judges view split bonds as a way of dealing with artificially high bonds?

A Yes, sir.

Q Now, isn't it also true that many judges viewed split bonds as a way of getting more bonds on people so that they wouldn't just be released on their own recognizance?

A Yes, sir.

Q Because that makes it more likely that they will come back; correct?

A Yes, sir.

Q By the way, you testified earlier Judge Porteous would sometimes turn you down for bonds; right?

A He's turned me down for a few.

Q Now, isn't it true that you testified earlier that Judge Porteous's standard operating procedure was to check out the representations that were made in bonds?

A Meaning --

Q That he would call to confirm --

A He would see what the wrap sheet is, yes.

Q Isn't it true that he would also call a prosecutor or the jail to confirm the facts --

A Most of the time he would have Rhonda call the jail to see. Normally, when we went there, we would call the jail and get the wrap sheet and have that on the worksheet if he would ask. But he would also double-check in some cases.

Q Didn't you do that on a regular basis, that he would get that confirmation?

A Most of the time, but sometimes he didn't.

Q Now, you said you worked with an individual named Adam Barnett. Do you recall?

A Yes, sir.

Q Isn't it correct that prior to 1993, prior to you and your sister developing that relationship you described with judges, that you would use Adam Barnett to approach judges; correct?

A Yes, I would.

Q And isn't it correct that you used Adam Barnett to approach Judge Porteous on bonds prior to 1993?

A Yes, I did.

Q And isn't it correct that there came a point

when you stopped using Adam Barnett because you didn't think that Judge Porteous trusted Mr. Barnett?

A Yes, sir.

Q Now, you testified before the House of Representatives -- and I'm quoting -- "I met Judge Porteous through another bail agent. At some point, the bail agent faded out, and then we became close with Judge Porteous after he faded out."

Do you recall something like that?

A Yes, sir.

Q You were referring to Adam Barnett there?

A Yes, sir, I am.

Q I would like to introduce House Exhibit 119Z. Mr. Marcotte, this is an article that we showed you in deposition. This is a Times-Picayune article from September 13th, 1993. The headline of the article reads "\$80,000 house is used as surety for \$300,000 in bonds."

Do you see that, sir?

A Yes, sir.

Q Do you remember that article?

A Yes, sir.

Q Now, isn't it true that --

A I don't remember everything that's in there. I remember this heading right here.

Q I'm not going to quiz you on it.

A Okay, okay.

Q Isn't it true that article was about the event that led Barnett to, quote, fade out?

A Yes, sir, it is.

Q Because that was an embarrassing story for people in Gretna; correct?

A Yes, sir, it was.

Q It was after that article that you became close with Judge Porteous and began to take him out to lunches more; right?

A Yes, sir.

Q Isn't it correct that you dealt with Porteous far more often in 1994 than you did in 1991?

A Yes, sir.

Q Let's talk about the lunches. Was it your experience in that legal community in Gretna that it was a pretty close knit community, legal community?

A It was close knit for some people.

Q But for lawyers and judges, for example?

A Yes, sir.

Q And wasn't it common for lawyers and judges to go out to lunch with each other and to socialize with each other?

A They did.

Q And you testified that you went out to lunch with Judge Porteous. Did you have these lunches in undisclosed or secret locations?

A No, sir, I didn't.

Q When you went into these restaurants, did you ask for a back room so you could not be seen having lunch with any of these judges?

A No, sir, I did not.

Q So it was pretty common for lawyers and judges to see you with Judge Porteous, was it not?

A I actually wanted them to see me with him.

Q What was that?

A I actually wanted them to see me with him.

Q Judge Porteous didn't try to avoid being seen with you or other people at lunch, did he?

A No, he did not.

Q Did you ever tell Judge Porteous that you expected certain things for this lunch or for all those lunches?

A Every time that I asked him for a bond, I would ask him, Judge, if you could see fit in setting this bond. Those were my words every time.

Q But did you ever say look, judge, I'm buying you this beef for a purpose, you know, please remember I just bought you lunch? Did you ever have a conversation like

that?

A No, I don't remember a conversation like that.

Q Now, the House asked you about places you took Judge Porteous to lunch and suggested that these were incredibly expensive lunches. I'm going to show you a number of receipts that the House has produced regarding these lunches. First, we're going to take a look at House Exhibit 372B. Can you see a receipt there?

A Yes, sir.

Q It appears this is a receipt for the Beef Connection. If you take a look at the amount on that receipt, you see it says \$352.43?

A Yes, sir.

Q Up in the right corner, it looks like there's a notation for the size of the group. Do you see that?

A Yes, sir.

Q How many people were at that lunch?

A 10.

Q And you testified when you were asked about when you thought the lunches started, you were thinking 1994 or 1995 when we're talking about lunches when you first testified?

A Yes, sir.

Q Let's take a look at another exhibit. This is House Exhibit 372B. If you look closely at the amount, the

amount seems to say \$268.84.

Do you see that?

A Yes, sir.

Q Let's take a look at how many people attended that lunch. There's a notation for the number of people attending. Can you tell me how many people attended that lunch?

A Nine.

MR. TURLEY: Madam Chair, we would like to move these receipts, obviously, into evidence.

VICE CHAIRMAN HATCH: Without objection.

(House Exhibit 372B received.)

MR. TURLEY: Thank you.

BY MR. TURLEY:

Q I want to have you take a look at another exhibit, which is House Exhibit 373A.

I want to blow up on what people were charged for.

This is one of the exhibits that they said Judge Porteous attended -- one of the lunches that Judge Porteous attended. Do you see any charge there for Absolut vodka?

A I don't see it.

MR. TURLEY: Chairman Hatch, we would like to move that into evidence as well, sir.

VICE CHAIRMAN HATCH: Without objection.

(House Exhibit 373A received.)

BY MR. TURLEY:

Q I wanted to go back to some of the discussion about the bonds. In 1993 and 1994, you previously estimated that in a given day you might have anywhere between one and 10 bonds through the courthouse; correct?

A Yes, sir, I did.

Q And you previously testified, however, that towards the end of Judge Porteous's period as a state judge, that there was -- that you wanted to, quote, open the floodgates; correct?

A Yes, sir.

Q And that you thought that you -- this was a long time ago, but you thought that you had moved a lot of bonds that last month; correct?

A Yes, sir.

Q I'm going to show you a demonstrative, which is an exhibit that Defense has created, and summarizes bonds in the record. Now, would it surprise you that on the last day that Judge Porteous was a state judge -- if you take a look down there, it says October 28, Judge Porteous sworn into the federal bench. Did you see that?

A Yes, sir.

Q It might be easier on your screen. If you take a look at the day before, which is technically his last day

as a state judge, it shows that he just approved one bond, right?

A Yes, sir.

Q Take a look at the day before that. How many bonds does it show that he approved the day before that?

A Two.

Q The day before that, on the 26th?

A Yes, sir.

Q Shows one; correct?

A Yes, sir. And one on the --

Q And then on the -- then there's no bonds, 25th, 24th. And then on the 23rd, how many bonds did it show him signing?

A One bond. On the 23rd?

Q Yes.

A One bond.

Q Right. Now, would it surprise you that Judge Porteous signed only three bonds in his last week?

A Well, if that's what you say it is. You know, all I know is I told my staff, as he was leaving, open the floodgates, wear him out, because, you know, we'll save the other ones for later.

Q Okay. That makes sense.

So when you said -- when you talk about the floodgates, that was what you were hoping to do; correct?

A Right. Maybe it was slow that week, you know. But that was what I said, for sure, wear him out before he leaves and save the other judges until after he's gone.

Q Now, would it surprise you that in the previous 21 days, that Judge Porteous only signed 27 bonds?

A If that's what your research shows, yes, sir.

Q That it would not surprise you, you're saying?

A No, it -- no, it would not surprise me.

Q Let's talk about those home repairs a second. I just want to clarify a couple of things. In the 1980s and '90s you sort of employed a group of guys that did construction; right?

A Yes, sir.

Q Isn't it true you testified you sometimes had trouble with these guys, to make sure they were working?

A The construction guys?

Q Yeah.

A Yes, I did.

Q And isn't it true that you also were concerned because these guys would do drugs a lot?

A Yes, sir, I did.

Q And isn't it true that you and your sister were never that confident about whether these guys were working or just messing around?

A Yes, sir, I did.

Q And you -- you often tried to keep a close eye on them, correct, for that reason?

A I did.

Q Okay. And didn't you use these construction crews to assist a friend to work on their house, in your previous testimony?

A Yes, I did. An employee or some -- you know.

Q Now, in your previous testimony, you said you volunteered to have these guys fix the fence for Judge Porteous; correct?

A Yes, sir.

Q And isn't that the only occasion when he -- when Judge Porteous was a state judge that you did home repairs for him?

A Yes, sir.

Q And you testified earlier that you don't know how much repairs were needed on the fence; correct?

A I did.

Q And, in fact, you testified earlier you don't know how much it cost; correct?

A Yes, sir.

Q And, in fact, you testified earlier that you didn't personally go and buy supplies for the repairs, did you?

A I did not.

Q And didn't you testify earlier that you didn't personally hand any cash to Mr. Wallace or Mr. Duhon for the fences?

A You know, they probably could have got a check from my accounting department or the petty cash. I don't know how it was done. Remember, all I did was sell.

Q Right. You weren't in the fence -- you didn't --

A I wasn't --

Q But you don't recall --

A I wasn't in anything but selling.

Q But you don't recall either way whether check or cash, you don't recall giving the money for it?

A No, sir.

Q Okay. And, in fact, you testified earlier that you didn't -- you weren't quite sure who paid for the materials. Isn't that true?

A Yes, sir.

Q And I want to be absolutely clear. When -- Judge Porteous, from the day he became a federal judge until this very day, you have never done any home repairs for him as a federal judge; correct?

A No, sir, I did not.

Q Thank you, sir. Now, let me go to car repairs. Now, isn't it true you've testified before that you don't

have any records of receipts for the car repairs; correct?

A If they -- if the government has them -- personally, I don't have them. But, you know, maybe the government has them.

Q And you didn't -- you didn't generally go do these repairs yourself. You said that people that worked for you did this?

A Yeah, with -- I would either send Jeff or Skeeter to go drop it off somewhere.

Q And I want to be absolutely clear. From the minute that Judge Porteous became the federal judge to this very day, you have never done any car repairs for Judge Porteous, correct, when he was a federal judge?

A Not that I can recall.

Q Now, I want to talk about that Vegas trip. We had talked about that during the deposition. Isn't it true that Judge Porteous went to Las Vegas to speak at that conference?

A I don't know if it was that conference, but I think one time we went just for -- you know, when I went with Giacobbe and him. And I don't think it was a conference that he spoke at but --

Q It might have been a convention. I might be using the wrong term. But he spoke at a convention in Vegas. Isn't that what you testified to previously?

A I know I went to Vegas with him and Jacoby. I don't know if he spoke at the convention at that time. The bail bonds convention was in Vegas for 25 years, and I brought different people, insurance -- so, I mean, I know I was in Vegas with Porteous and Giacobbe, unequivocally, without a doubt.

Q Do you recall testifying under oath previously when asked did he go to Vegas to speak at this convention, and you answered, "he did"?

A Yes, I did.

Q Okay. Now, on another trip to Vegas, you were asked about paying the cost of Judge Porteous, in fact, Mr. Goodlatte, I think, went over that with you. That was a trip where -- that Bruce Netterville attended; correct?

A Yes, sir.

Q Now, you were -- you were the best man for Netterville at his weddings, weren't you?

A Yes, I was.

Q At his wedding, I should say.

A Yes, sir.

Q Yeah. Now, Mr. Netterville is married to Judge Chehardy; right?

A Yes, sir, he was.

Q And by the way, did you do bonds with Judge Chehardy?

A Yes, I did.

Q Okay. And you were friends with Mr. Netterville, weren't you?

A Yes, I was.

Q And you're still friends, aren't you?

A Yes, I am.

Q And so, you know, he was someone you wanted to go to Vegas on that trip?

A Yes.

Q And part of that was because you were friends and had a close relationship; correct?

A Yes.

Q So you didn't just ask Netterville to, quote, make things look better; he was there also as a friend; right?

A As a friend. And I also wanted him to be close with Porteous, because, you know, at some point you start wearing someone else out and you send someone else in and accomplish the same thing, except you've got to pay a little more to get it done, to the lawyer, instead of -- see where I'm going?

Q And you previously testified that you didn't give any cash to Porteous on these trips; correct?

A I did not.

Q And you previously testified you never saw

anyone else give him cash on these trips; correct?

A I did not.

Q Let's talk about the Wallace and Duhon set-asides for a bit, because Mr. Goodlatte spent a fair amount of time on that. Now, you had talked about how Judge Porteous said that he wanted to wait to deal with the Wallace matter until after his confirmation; correct?

A Yes, sir.

Q I'm going to show you House Exhibit 246. I'm going to specifically look at page 4. Oh, actually, I'm going to first start on page 1 and then we're going to go to page 4, because I want to look at the date on page 1.

A September 21, 1994.

Q Can we zero in on the date?

A Yes. September 24, 1994.

Q I thought it was 21. Let's take a closer look. September 21st, is that what you said?

A Yes, sir, 1994.

Q All right.

MR. SCHIFF: I'm sorry, Counsel, can we know what document is on the screen?

MR. TURLEY: This is House Exhibit 246, I believe.

BY MR. TURLEY:

Q Now, do you know when Judge Porteous was

confirmed?

A If you ask me right now the date, no, sir, I don't.

Q All right. Would it -- would it surprise you to learn that Judge Porteous was confirmed October 1994?

A Yes, sir.

Q So if Judge Porteous was confirmed in October 1994, doesn't that mean that he actually dealt with the Wallace matter you just saw in September?

A Yes, sir.

Q That would be before; correct?

A Yes, sir.

Q Okay. Let's take a look at -- let's take a look at page 4 for a second, at the very end. There's a statement that the judge made, this is after he set aside judge -- the judge set aside the conviction. And then he says that he thought that he could deal with expungement later; correct?

MR. SCHIFF: Madam Chairman, object. That wasn't the set-aside of the conviction, so I think counsel may be misrepresenting that.

MR. TURLEY: What are you suggesting this was?

MR. SCHIFF: There was a -- Madam Chair, there was a motion to amend the sentence that took place in September. The set-aside of the conviction, though, didn't

take place until after the confirmation, in October.

MR. TURLEY: Actually, that's what we're going to be getting to. With that note in, I'd like to proceed, so the Government can make that objection, obviously.

BY MR. TURLEY:

Q But I want to simply note that in this hearing -- unfortunately, I can't see these very well -- you can see it says, "if you want further relief, then file a petition to enforce 893 and then I'll execute that also."

Do you see that?

A Yes, sir.

Q Do you know what an 893 is?

A I think first-time offender, if you don't get in trouble in X amount of time, that you -- the probation will be terminated.

Q Does it also deal with expungements?

A Yes, sir.

Q So in September 1994, in open court, the judge is dealing with the set-aside and saying that he is willing to deal with the expungement; correct?

A Yes, sir.

Q Now, I'd like to deal with the Duhon matter. You talked about the Duhon matter with Mr. Goodlatte; correct?

A Yes, sir.

Q Okay. And you mentioned that the Duhon case -- that Judge Porteous had set aside a conviction by another judge; correct?

A Yes, sir.

Q I think you said Judge Richards; correct?

A Right.

Q And you said, you know, this was over in Judge Richards's court and it was Judge Porteous that grabbed it from Judge Richards; correct?

A Yes, sir.

Q Are you aware that Judge Richards actually set aside that conviction before Judge Porteous acted?

A No, sir, I'm not.

Q I'd like to show you House Exhibit 77C, and I'd like to highlight the date on this. Now, this is -- you can see this is a motion to set aside conviction and dismiss prosecution. I'd like to zero in on the date.

Go to the next page. They're going to blow it up for you in a sec.

A My eyes are bad too, getting old.

Q Do you see where it says June 18, 1993?

A Yes, sir.

Q Now, are you aware that this date is one month earlier than the date when Judge Porteous dealt with this matter in his courtroom?

A Yes, sir, if that's what you're saying.

Q Well, let me ask you, are you aware that Judge Richards actually signed an expungement -- signed an expungement for Duhon before Judge Porteous ever did?

A I wasn't aware of that.

Q We're going to put in a new exhibit, which we'd like to introduce for evidence. We're going to mark this as Porteous Exhibit 2006. And we previously notified the House about this exhibit.

A Okay.

MR. TURLEY: Madam Chair, can we introduce this as Porteous 2006?

CHAIRMAN MC CASKILL: Hearing no objections, it will be admitted into the record.

(Porteous Exhibit 2006 received.)

BY MR. TURLEY:

Q Now, I'd like to highlight the date on this document. And do you see where the document shows July 1992?

A Yes, sir.

Q That was two years before Judge Porteous dealt with this matter; correct?

A Yes, sir.

Q Now, I should note that this expungement -- this is one of the expungements that he received during this

period. It has a different number from the one that -- the previous exhibit. We're offering this just to show Judge Richards's previous work in this case.

By the way, with Mr. Duhon, what Judge Porteous did, which you referred to, was an expungement, correct, not a set aside?

A Either both or either/or.

Q You don't know which one?

A I'm not exactly sure.

Q Well, how about this? An expungement -- expungements are fairly routine, aren't they, in Gretna?

A Yes, sir, they are.

Q And if judges don't hear objections, they tend to grant them, don't they?

A Yes, they do.

Q And expungements are common because they tend to give people second chances; right?

A Yes, sir.

Q Okay. Now, in Mr. Duhon's case, wasn't the offense that was expunged by Judge Porteous an offense that had occurred 17 years previously?

A Yes, sir.

Q And wasn't he 17 years old at that time?

A Yes, sir.

Q So what Judge Porteous did is he expunged an

offense that a man had committed at age 17 that had occurred 17 years previous; correct?

A Yes, sir.

Q Was your sister Lori Marcotte friends with Rhonda Danos?

A Yes, they were friends.

Q They would socialize with each other?

A Yes, they would.

Q Go on trips together?

A Yes, sir.

Q And isn't it true that sometimes it was --

Ms. Danos would help you with social events?

A Yes, she would.

Q Including planning trips in Vegas, for example?

A Yes. Kind of use her as an administrator a little bit, the overflow from my girl, who was really busy.

Q Sort of like a side job of hers?

A I wouldn't call it a job, but just, you know, make arrangements.

Q Didn't you previously testify that she actually did work like this of planning as a separate job? Didn't she often do that?

A I don't remember.

Q Wasn't she associated with --

A I thought she was associated with the casinos

and did stuff like that for them. I thought she had another job doing that.

Q Okay. I want to make sure, you had testified earlier that Bail Bonds Unlimited did have some bonds that you had in federal court; correct?

A Very few, because they mainly took cash deposits. Probably -- I mean, we probably wrote two or three in a year.

Q But Judge Porteous never executed a bond for you as a federal judge?

A No, sir, he did not.

Q Not to this very day, he's never done a bond for you; right?

A No, sir, he did not.

Q I want to make sure, you had said that Judge Porteous was openly friendly with you in courthouses and restaurants; correct?

A Yes, sir.

Q And you described your relationship to Judge Porteous earlier in deposition as a friendship; correct?

A Yes, sir.

Q Now, prior to your interviews with the FBI, did Judge Porteous tell you what to say to the FBI? Did he say, okay, this is what I want you to say?

A No, he did not. I knew what I had to say.

Q But did he ever tell you to be untruthful?

A No, he did not.

Q Did he ever tell you to make sure you lie about this subject or that subject?

A No, sir, I don't think he knew what the questions were going to be.

Q Now, did Judge Porteous sit you down -- let me -- let me go back a step.

Wasn't it Judge Porteous who had suggested your name or to the best of your knowledge?

A Yes, sir.

Q Now, did he sit you down and work through likely questions and answers with you?

A No, sir, he did not.

Q Did you take notes of your interview with the FBI?

A No, sir.

Q Now, after your FBI interview, you didn't immediately call Judge Porteous, did you?

A Maybe there a few days after, we had lunch and then I told him everything that they asked.

Q Well, when you -- didn't you testify earlier that you sort of summarized what you had discussed?

A Yes, sir.

Q You didn't go question by question; right?

A No, sir.

Q And isn't it correct that even sitting here today, you don't -- you don't recall exactly what you were -- what you told Judge Porteous at that -- that lunch?

A Well, there's one -- I remember the Keith Klein matter, because in the days of Keith Klein, 25, \$100,000 bond was -- I've never wrote 100 in those days. So that -- what they asked me about Keith Klein stuck out. I knew exactly, because of that reason.

Q And you recall that?

A Yeah. And then also, you know, a lawyer saying, look, a guy came in with a wire, he was asking me all kinds of questions, stay away from him.

Q Those stuck out in your mind?

A Yeah, those stuck out in my mind. And the drinks too, you know, I mean, that stuck out in my mind. But anything else other than the drinks and Keith Klein, you know, it was just generic stuff that I can remember, and it wasn't --

Q Now, did Judge Porteous ask you, did you lie to the FBI? Did he ever ask you that?

A No, sir, he did not.

Q Now, at some time, you told Judge Porteous that you had given him a clean bill of health with the FBI; correct?

A Yes, thumbs up.

Q Thumbs up. Is that the words you used, like thumbs up?

A Yeah.

Q Yeah. Now, you had testified earlier that you didn't think that you would be able to coerce the judge, correct, Judge Porteous?

A In which way?

Q In any way. When we asked you whether you thought you could coerce the judge because of your FBI interview, didn't you say no?

A No.

Q And you still don't believe it?

A No.

Q Now, Mr. Goodlatte asked you about your knowledge of his financial affairs, and you said, well, I knew what his -- his cars looked like, but that was the extent of it. You didn't know about his bank accounts or anything like that, did you?

A No, sir, I did not.

Q He sort of had crummy cars; right?

A He had crummy cars and needed help fixing them, so I kind of --

Q I just want to clarify one thing. With Mr. Goodlatte, we don't have to throw it up, but he showed

you your plea agreement. Do you remember you talked with him about your plea agreement?

A Yes, sir.

Q And he said, didn't you plead guilty to, quote, a corrupt relationship with Judge Porteous? Do you remember when he asked you that?

A Yes, sir.

Q Was Judge Porteous ever tried for any crime that you know of?

A No, sir, he was not.

Q Was Judge Porteous ever charged with any crime that you know of?

A No, sir, he was not.

Q You pleaded to them, I mean, you didn't even have a trial; right?

A No, sir, I did not.

Q Now, did you ever give cash to other judges?

A Yes, sir, I did.

Q Which judges?

A Do I have to give the names?

Q Well, we have --

A Can I say maybe three dozen, between judges and state reps and stuff like that? Do I have to give names?

MR. TURLEY: Madam Chair, instead of going through the names of these judges, which we have no need to

do, we'd like to just introduce his previous deposition. The House had indicated that they wanted to introduce prior depositions. This is Deposition 447. We'd like to introduce the whole deposition into evidence.

MR. SCHIFF: Madam Chair, we have no objection whatsoever.

CHAIRMAN MC CASKILL: That deposition will come into evidence in its entirety.

(House Exhibit 447 received.)

MR. TURLEY: Thank you, Madam Chair.

BY MR. TURLEY:

Q Isn't it true you testified earlier that you thought some judges took campaign contributions but then used that money for personal purposes?

A Yes, sir.

Q And, in fact, didn't you say that you thought that the percentage of judges that did that might have been 60 or 70 percent?

A Several judges, yeah.

Q Do you recall saying, when we asked you what percentage, that you thought it might be 60 or 70 percent?

A Yes, sir.

Q Thank you. Did you ever give Judge Porteous campaign contributions?

A No, sir, I did not.

Q Is it true that you did home repairs for other judges?

A Yes, sir, I did.

Q And isn't it correct that you gave shrimp to other judges?

A Yes, sir, I did.

Q And isn't it correct that you, at one point, went to New York and got a bunch of sort of fake Rolex watches? Do you remember when you did that?

A Yes, sir, I paid \$10 for them.

Q Each; right?

A Right.

Q And then you came back to the courthouse and you gave them out to judges, didn't you?

A Yes, sir.

Q In fact, you went from chamber to chamber and handed those watches to judges; right?

A Yes, sir.

Q Most of them took it; right?

A Probably half took them, half of them returned them.

Q Isn't it true you testified earlier that you also gave judges hams, turkeys, cakes, gingerbread houses; right?

A Yes, sir, I did.

Q Most of them took that; right?

A Yes, sir, they did.

Q And it was pretty standard for judges to get gifts in Gretna from lawyers and other people; right?

A Yes, sir.

Q Now, after Judge Porteous was on the federal bench, did you ever leverage the information about your relationship to force him to do anything?

A No, sir, I didn't. I mean, I leaned on him. That's somewhat force but --

Q I'm sorry, we're having a flurry of pages here.

A I'm sorry.

Q Now, I want to ask you about -- Mr. Goodlatte showed you this sort of grainy videotape. Do you remember seeing that, from Emeril's?

A Yes, sir.

Q I think this was Exhibit 375. And it captured all of these pictures of people leaving Emeril's; right?

A Yes, sir.

Q At that lunch, did you go into a back room to have lunch with these judges?

A No, sir, I did not.

Q Did you try to hide the lunches -- the lunch in any way from people seeing you?

A No, sir, I did not.

Q And, in fact, isn't it true that you testified that Porteous actually didn't -- Judge Porteous didn't actually eat lunch, he came at the very end; correct?

A Yes, sir, he did.

MR. TURLEY: Madam Chair, we just wanted to be clear that we have moved in as exhibits into evidence Exhibits Porteous 2007, 2006, 373A, 372B, 372D, 276 -- 246, I'm sorry.

We've also moved in the CD and bond forms that we have marked Porteous Exhibit 2002, 2003 and 2004. And we can stop our questioning at this time.

CHAIRMAN MC CASKILL: Let me -- I want to clarify something. Did you offer into evidence the calendar that you had prepared that had the quote at the top? But did you offer into evidence the underlying bond documents that support what was on that calendar?

MR. TURLEY: We are going to be introducing those bonds, but that was just a demonstrative. We will be introducing the bonds referenced there in a later testimony.

CHAIRMAN MC CASKILL: Have the -- all the bond documents that would support that demonstrative exhibit, have they all been marked?

MR. TURLEY: I think they all have, yes, they all have been marked.

CHAIRMAN MC CASKILL: So the entire history of the judge's bond documents have been marked?

MR. TURLEY: They have all been marked, yes.

CHAIRMAN MC CASKILL: And you will be offering them into evidence at a later point?

MR. TURLEY: We most certainly will.

CHAIRMAN MC CASKILL: Okay.

MR. TURLEY: Thank you.

MR. SCHIFF: Madam Chair, could we have a few minutes? We have some demonstrative exhibits we need to prepare. It will just take us five or 10 minutes to get them queued up. That way we won't have to interrupt the questioning of the witness.

CHAIRMAN MC CASKILL: Okay. Let's try to do it in five.

MR. SCHIFF: Thank you, Madam Chair.

(Recess.)

CHAIRMAN MC CASKILL: You may proceed, Congressman.

MR. GOODLATTE: Thank you, Madam Chair.

REDIRECT EXAMINATION

BY MR. GOODLATTE:

Q Mr. Marcotte, in response to one of the questions from Mr. Turley, you said that the DAs could object. How often did they get involved?

A Hardly ever.

Q And Mr. Turley asked if Judge Porteous ever called the prosecutor. Isn't it true that he rarely, if ever, called the DAs?

A Most of the time he didn't, but there were times that he did call.

Q How often?

A They used to have a drug court, and he would ask the DA in the drug court for no objection. But, you know, that only lasted for a small window of the time that I was doing bonds.

Q So most of the time he didn't do that?

A Most of the time not.

Q Mr. Turley asked you -- Mr. Turley asked you a lot of questions about 1993 and 1994 and Adam Barnett. In your mind, is it an approximate date that these things took place with Mr. Barnett?

A I don't know if it's -- it's been a long time ago. Somewhere in the '90s, you know.

Q You said on direct -- actually, on cross-examination in response to Mr. Turley that the meals started in 1994. It's clear that there may have been meals before that time, is that not correct?

A Yes, sir, somewhere in the '90s, the early '90s.

Q Now, Mr. Turley produced a chart. Let's --

let's swing that easel around, since we don't have it on the monitors. Let's bring it over here so the Senators can see it.

Are you aware that Judge Porteous's confirmation hearing was on October 6? That's the question to you.

MR. TURLEY: If it would be easier for the Senators, we could pull up our exhibit so you could see it.

CHAIRMAN MC CASKILL: That's fine. I don't think it's necessary. We get it.

BY MR. GOODLATTE:

Q Are you aware that Judge Porteous's confirmation hearing was on October 6?

A Yes.

Q And he was confirmed by the Senate on October 7?

A Yes, sir.

Q So that would explain why that first week there aren't too many bonds. And then he came back to Louisiana, obviously, on that Saturday, and then the following week you had a --

MR. TURLEY: I'm sorry, that is not in the record, when he returned to Louisiana, that I know of.
Mr. Goodlatte --

CHAIRMAN MC CASKILL: What's your objection?

MR. TURLEY: It's not in the record. I don't know where Mr. Goodlatte is getting that he returned on a

Saturday. We don't know that to be true. He just told the witness it's true and we don't know that.

MR. GOODLATTE: Let's point out --

CHAIRMAN MC CASKILL: Is this a hypothetical question or assuming facts not in evidence? I think that's the question.

MR. GOODLATTE: I'm happy to withdraw the comment about when he returned.

CHAIRMAN MC CASKILL: Why don't you reword it, Counselor.

MR. GOODLATTE: Thank you.

BY MR. GOODLATTE:

Q So after October 7, in the week following, we see a lot of bonds being set, do we not?

A Yes, sir.

Q You don't know whether these are all of the bonds or only the bonds that were found as a part of the investigation, is that not correct?

A That's not correct.

Q They're all the ones that the House could find. Is that not correct?

A Yes, sir.

Q And just so it's clear, there were two trips to Las Vegas, were there not, that Judge Porteous took?

A Yes, sir.

Q Now, have you seen the legal pleadings before you that Judge Turley showed you with regard to -- oh, my -- Mr. Turley.

MR. TURLEY: I'll accept the elevation.

BY MR. GOODLATTE:

Q You have seen the documents that Mr. Turley -- have you seen the legal proceedings -- pleadings that Mr. Turley --

A Other than today or just now?

Q Other than just now.

A Possibly.

Q Do you have personal knowledge about those documents, or are you just reading what was put on the screen?

A I have personal knowledge but not by looking at the documents, by either lawyers telling me, hey, it's done or it isn't done.

Q You have personal knowledge of the events but not of the documents?

A Yes, sir.

Q So you may be aware that Jeff Duhon had two criminal convictions?

A Yes, sir.

Q And one of those criminal convictions that Mr. Turley put up on the screen was expunged by another

judge?

A Yes, sir.

Q But there was still another criminal conviction that needed to be addressed, is that not correct?

A Yes, sir.

Q Let me call up Exhibit 77B. Do you recognize Judge Porteous's signature on that document?

A Yes, sir.

Q All right. Now, let's call up Exhibit 500, which is PowerPoint 23. Now, this is Judge Porteous's set aside -- let me point out, this earlier conviction was --

MR. TURLEY: I'm sorry, Madam Chair, we're not sure which has been produced to the Defense. Has this been produced to the Defense?

CHAIRMAN MC CASKILL: Is this a demonstrative exhibit or is this an exhibit that's being offered for evidence?

MR. GOODLATTE: It's a demonstrative exhibit.

MR. TURLEY: We were required to produce all demonstratives before trial. As far as we know, this has never been produced to the Defense, and we were told that we had to do that before trial.

CHAIRMAN MC CASKILL: Could I suggest, I think that the information that's contained on this exhibit is information that you can elicit through questioning,

Counselor.

MR. GOODLATTE: Yes.

CHAIRMAN MC CASKILL: Why don't we take the exhibit down, if Judge Porteous's lawyers have never seen it, and why don't you go through the exhibit by virtue of questioning as opposed to use of the demonstrative.

Are there any other demonstrative exhibits that you all have that Judge Porteous's lawyers have not seen?

MR. GOODLATTE: I think we can pull up the actual order, which is before the court.

CHAIRMAN MC CASKILL: I think the actual order would be fine but let me ask the question again. Does the House impeachment team believe that you have any other demonstrative exhibits that you have prepared that Judge Porteous's lawyers have not seen?

MR. DUBESTER: Senator McCaskill, Mark Dubester for the House. It's my personal belief we produced this, and if we didn't, then it's on me for not having done so.

And it's my personal belief we produced all our demonstratives, so I was a little surprised just now that he said he hadn't received it. Nonetheless --

CHAIRMAN MC CASKILL: Why don't we do this. Why don't you ask someone on your team over lunch to get with someone from Judge Porteous's team over lunch and go through them again just to make sure that we're clear.

Are you confident, Mr. Turley, that this has not ever been produced?

MR. TURLEY: None of us have seen this demonstrative, and we're fairly confident. We can also, as you suggest, we'll continue to look.

CHAIRMAN MC CASKILL: Over the -- when we are -- we're going to have a much longer lunch break today than normally. That will give you plenty of time to get something to eat and also have somebody on your teams go through this list so we don't have this again.

In the meantime, I think it would be better for you just to use the exhibit that has been marked and accepted into evidence or has been stipulated to.

MR. GOODLATTE: Agreed. We'll call that up.

CHAIRMAN MC CASKILL: I should let the team know that we have copies of it, which means it was produced. So you might double-check again before you -- before lunch and make sure, okay?

MR. TURLEY: Yes, Madam Chair.

MR. DUBESTER: Senator's indulgence, we're looking for the underlying document. I'm sorry, because we did think we had produced it.

CHAIRMAN MC CASKILL: Is the underlying document one of the orders on the expungement?

MR. DUBESTER: Yes, ma'am.

CHAIRMAN MC CASKILL: Which order? The Porteous expungement or the other expungement?

MR. DUBESTER: It's the September 22 set-aside and the October 15 order of expungement. And I believe both those documents are in the, for lack of a better word, the hot document binders that we've provided the Senate. But we just did not have those ready to call up.

MR. TURLEY: Madam Chair --

MR. SCHIFF: Madam Chair, if I could just clarify, because I think some of the terminology is perhaps not precise. In the case of Mr. Wallace, there were two steps required. Mr. Wallace pled guilty to an offense that could not legally be set aside. There was a motion made to actually change what he pled guilty to so that the record would allow a later set-aside of the conviction.

The pleadings that Mr. Turley originally showed the witness were the pleadings in the motion to change the nature of what he had pled guilty to some years before.

After that motion was granted, there was a time delay. Later the judge went and set aside the conviction.

So those are the two legal processes. That's what the demonstrative exhibit would show. We have the underlying pleadings that we can hopefully locate in time.

But that -- you know, the terms "set-aside" and "expungement" are different legally but they have been used

somewhat interchangeably.

CHAIRMAN MC CASKILL: I understand.

MR. TURLEY: Madam Chair, I was rising to say if our colleagues can't find all the underlying documents, we're not going to keep them from using the demonstrative if they're having that much trouble. We can deal with the demonstrative later if they really need it. I don't want to delay them any further, or you.

CHAIRMAN MC CASKILL: I think that would be terrific, go ahead and use the demonstrative.

Thank you, Mr. Turley. I don't think there's anything on that exhibit that should be a surprise to you, because clearly, it only references dates and documents that you are clearly aware of; is that correct?

MR. TURLEY: We have not reviewed it, but to assist the committee, we don't want to stop --

CHAIRMAN MC CASKILL: Let's do this. Let's use the demonstrative exhibit, and if there's anything on that demonstrative exhibit that you believe is incorrect, then we certainly will give you an opportunity to correct the record in that regard.

MR. TURLEY: That's fine. We just hope that the House for any further demonstratives -- to make sure they have been sent to us.

CHAIRMAN MC CASKILL: I'm depending on you all

to do that over lunch.

MR. TURLEY: Thank you very much.

CHAIRMAN MC CASKILL: Go ahead and use the demonstrative exhibit, Counselor.

MR. GOODLATTE: Thank you, Madam Chair. And thank you, Mr. Turley.

BY MR. GOODLATTE:

Q Now, looking at this exhibit that we have on the screen, Mr. Marcotte, this is the order that was entered by Judge Porteous on September 22, 2004. And I believe Mr. Turley produced this exhibit in a different format earlier.

And is it your understanding that Judge Porteous held a hearing and amended Mr. Wallace's sentence to reflect that Mr. Wallace pleaded guilty under Article 893 on that date?

A Yes, sir.

Q So he had to change the nature of what Mr. Wallace had pled guilty to earlier?

A Yes, sir, he did.

Q Because otherwise, his conviction for the earlier crime could not be expunged?

A Expunged, yes, sir.

Q All right. But he did not -- he did not enter the order of expungement on that date, did he?

A No, sir, he did not.

Q But he could have, couldn't he?

A He could have.

Q Right. Why didn't he?

A Because he was waiting to get --

Q Using the exhibit here again, I think we've all agreed, on October 6, his confirmation hearing took place. October 7 he was confirmed.

A Confirmed.

Q This took place on September 22, is that not right?

A Yes, sir.

Q Okay. Now, let me show you another document that Mr. Turley did not bring up earlier. This is PowerPoint 24, Exhibit 501.

This is the actual expungement -- I'm sorry, the actual set-aside of the conviction of Aubrey Wallace?

A Yes, sir.

Q That you had spoken to Judge Porteous about?

A Yes, sir.

Q What's the date on that? What's the signature down there?

A 14th of October.

Q October 14. So that's after the date of his confirmation hearing and the date of his confirmation by

the United States Senate?

A Yes, it is.

Q But prior to the date, which was October 28, according to their chart, that he was actually sworn in as a United States District Court judge?

A Yes, sir.

Q Now, Mr. Turley asked you about your doing home repairs and car repairs for Judge Bodenheimer?

A Yes, sir.

Q Did Judge Bodenheimer later plead guilty --

A Yes, he did.

Q -- to receiving those car repairs and home repairs?

A Yes, sir, he did.

Q And is it also true that you delivered other gifts to him and to Judge Porteous, like shrimp?

A Yes, sir.

Q Tell us about the shrimp.

A Probably --

Q This wasn't just a little bucket of shrimp, was it?

A No, sir, probably about 3- to \$500 worth of shrimp. I wanted to make a statement when I did something.

Q When you answered Mr. Turley's question about if you'd ever used leverage, and you said "I leaned on him,"

what were you referring to?

A Push, force, you know, not taking no for an answer, just keep going back and back until I could get him to cave.

Q And you had occasions, didn't you, where you'd ask Judge Porteous to issue a bond and then he'd say no, and then you'd have lunch with him and spend a lot of time with him, and then he'd say yes?

A Yes.

Q And if you had a falling-out with Judge Porteous over these circumstances where he refused to do something you wanted him to do, you were in a position to destroy him, weren't you?

A Was I in a position to destroy him? I wouldn't have had a falling-out with him. I would have just let the bond go.

Q No, if you did, if you wanted to do that, were you in a position to do that?

A Yes, I was.

Q You could have told the FBI that he was on the take from you, couldn't you?

A Yes, sir.

Q So by virtue of doing that, either part of the confirmation hearing or part of the investigation that took place regarding your own criminal activities, you could

have told a very different story than what you told?

A Yes, I could have.

Q You were lying to the FBI on both occasions?

A I was lying to protect him, and myself.

MR. GOODLATTE: I have some documents I'd like to introduce for the record. First we have document 69B. I'm moving these into evidence, Madam Chairman.

CHAIRMAN MC CASKILL: Are there any objections?

MR. GOODLATTE: These are documents that we identified during the course of the testimony. Document 69B --

MR. TURLEY: Just a second, Madam Chair, if we could have a second.

MR. GOODLATTE: Let me give you all of them. 69B --

MR. TURLEY: I'm sorry, if they're moving in 69B as a whole, this is a huge document, because it's like -- I mean, it's like 300 pages.

CHAIRMAN MC CASKILL: The size is not an appropriate objection.

MR. TURLEY: No, no, but what I'm saying is that it contains a huge number of individual documents, it would not be appropriate just to move them in for this use. We've been moving in --

CHAIRMAN MC CASKILL: I don't think it's not

appropriate is an appropriate objection. What is your objection to 69B?

MR. TURLEY: There's no -- there's no foundation. They're moving in a huge document of un -- of various insular documents that have no foundation.

MR. GOODLATTE: Let me narrow it.

MR. TURLEY: By the way, this includes 302s, which the committee just said it was not going to enter into evidence.

CHAIRMAN MC CASKILL: If it contains documents which the committee has already indicated that we would not accept as documentary evidence, then I think you need to amend whatever request you're making, and the objection is sustained.

MR. GOODLATTE: We will withdraw that request.

Mr. Marcotte has testified to the pertinent language that we showed him in our exhibit.

Second would be Exhibit Number 375, the Emeril's receipt.

CHAIRMAN MC CASKILL: Any objection to Exhibit 375?

MR. TURLEY: No, no objection.

CHAIRMAN MC CASKILL: Without objection, that exhibit is part of the record.

MR. GOODLATTE: The next would be Exhibit 241,

the surveillance video.

MR. TURLEY: No objection.

MR. GOODLATTE: Next would be Exhibit 280, the affidavit that Mr. Marcotte testified -- his affidavit signed at the request of Judge Porteous's attorney.

MR. TURLEY: No objection.

MR. GOODLATTE: Exhibit 71A, the Marcotte criminal pleading.

MR. TURLEY: No objection.

MR. GOODLATTE: And 71E, the Marcotte incarceration order.

MR. TURLEY: No objection.

CHAIRMAN MC CASKILL: All of those exhibits will be entered into the record without objection.

(House Exhibits 375, 241, 280, 71A and 71E received.)

MR. GOODLATTE: Thank you.

BY MR. GOODLATTE:

Q Mr. Marcotte, you testified in response to Mr. Turley that you did things for lots of judges.

A Yes, I did.

Q And some of those judges went to prison, did they not?

A Yes, they did.

Q Of all the judges that you did things for, who

was the most important judge to you, ever?

A Thomas Porteous.

MR. GOODLATTE: I have no other questions.

MR. TURLEY: We do not need any recross, thank you.

CHAIRMAN MC CASKILL: Thank you both.

I have a question.

Anyone else have any questions? Any questions from the panel?

EXAMINATION

BY CHAIRMAN MC CASKILL:

Q Mr. Marcotte, it was interesting during your testimony, and I just want to clarify, that when you discussed the expungement of your employees' records, that you indicated that Judge Porteous referenced his not wanting to jeopardize his appointment. And you used the phrase "his lifetime appointment."

Was that particular phrase, "his lifetime appointment," was that the words of Judge Porteous or was that something you supplied in terms of the context?

A That was the words of Judge Porteous.

Q And did Judge Porteous use the word "lifetime appointment" whenever he referred to his appointment to the federal bench?

A Yes, he does.

CHAIRMAN MC CASKILL: Any other questions?

Okay. Thank you, you're excused.

THE WITNESS: Okay. Thank you.

(Witness excused.)

CHAIRMAN MC CASKILL: Next witness.

MR. SCHIFF: Madam Chair, the House calls Lori Marcotte.

CHAIRMAN MC CASKILL: Is someone getting the witness?

For purposes of your calculation, the House now has 14 hours and 19 minutes remaining, and Judge Porteous has 15 hours and 19 minutes remaining.

MR. GOODLATTE: Madam Chairman, I think we can abbreviate this, if we could have about five minutes to consult amongst counsel on the questions to be asked. It would save time.

CHAIRMAN MC CASKILL: Are we going to save more than five minutes?

MR. GOODLATTE: Yes.

(Laughter.)

CHAIRMAN MC CASKILL: If we're going to save more than five minutes, you may have five minutes.

(Recess.)

CHAIRMAN MC CASKILL: I would ask that you try to go as quickly as you can, because I expect that we're

only going to have about 15 minutes, at the most, until we have to leave for votes.

I would ask the witness to stand, raise your right hand.

Whereupon,

LORI MARIA MARCOTTE PARIGI

was called as a witness and, having first been duly sworn, was examined and testified as follows:

CHAIRMAN MC CASKILL: You may be seated.

THE WITNESS: Thank you.

MR. GOODLATTE: Thank you.

DIRECT EXAMINATION

BY MR. GOODLATTE:

Q Ms. Marcotte, would you state your full name for the record.

A Lori Maria Marcotte Parigi.

Q Where were you born?

A In Gretna.

Q Where did you grow up?

A In Gretna.

Q And are you related to Louis Marcotte?

A Yes, that's my brother.

Q At some point, did you go to work with him?

A Yes.

Q And what were your duties?

A I started off doing accounting work and then later doing bail and then executive work after that.

Q So you ran the business with him, is that fair to say?

A Yes, that's correct.

Q And in addition to that, you handled the books and the accounting?

A Yes.

Q We've heard from your brother, Louis. I have just a few questions to get the timing down. At some point in 1992, did you take Rhonda Danos to Las Vegas?

A Yes, that's correct.

Q Why did you do that?

A Because she was Judge Porteous's secretary, and we wanted to get some help from that office.

Q From Judge Porteous?

A Yes.

Q Who paid for that trip to Las Vegas?

A We did.

Q And at some point after that, what do you recall about a trip to Las Vegas that included Judge Porteous?

A It was either the same year or the next year, Louis took Judge Porteous with another judge and an attorney, couple of attorneys, to Las Vegas.

Q So it was your brother, some attorneys and Judge

Porteous that you know of?

A Yes, and another judge.

Q And another judge. Do you know who that was?

A Judge Giacobbe.

Q And how is the trip paid for?

A Our company paid for it.

Q Your company paid for it?

A Yes. Well, it was paid -- I think Rhonda had used a credit card, and then we reimbursed her.

Q You paid her how?

A With cash.

Q Why did you give her cash?

A Because we didn't want everyone to know that we paid for the trip.

Q And where did you give that cash to her?

A In her office in Judge Porteous's chambers.

Q Now, I have some specific questions of you concerning Judge Porteous's conduct as a federal judge. After he became a federal judge, could he set bonds anymore?

A No.

Q Not in state court?

A Sure.

Q And could he help you as much as he did when he was a state court judge?

A No.

Q But could he help you at all?

A Yes.

Q How did he help you?

A Being a federal judge is a pretty prestigious position appointed by the president. With that comes a lot of respect, along with Judge Porteous's record of being respected in the 24TH Judicial courthouse also.

So going to lunch with Judge Porteous as a federal judge, other judges in the 24th Judicial Court would view us as trusted people because we were hanging out with a federal judge.

Q Did you ever have Judge Porteous join you at a lunch with Justice of the Peace Kerner?

A Yes.

Q Can you describe what took place there?

A It's -- I think he was a mayor, mayor's court, which acts like the justice of the peace, in a little small town called Lafitte. And that's where Rhonda Danos, his secretary, was from.

And we wanted to try to get Judge Kerner at lunch so we could have Judge Porteous explain the bond process kind of to train him on setting bonds. So --

Q Did Judge Porteous do that?

A Yes, Rhonda called him, and we went to lunch at

the Beef Connection in Gretna. And we're all sitting at a table, it was a big lunch, and my brother comes in with a Louisiana law book to show Judge Kerner that he had the ability to set bonds.

And Judge Porteous was telling Judge Kerner, you know, that he could trust us, that we were good people, that, you know, we would go to lunch. And Judge Kerner got up at that lunch and left.

Q He didn't want to have anything to do with it?

A He was uncomfortable, yes.

Q Who is Norman Stotts?

A Norman Stotts was kind of our boss. We owned our own company, of course, but we worked for an insurance company. And each -- the insurance company had representatives that would come out and visit the agents.

And he would decide if -- what type of writing authority the insurance company would allow us to have. Of course, we also had collateral with the insurance company.

But by taking Norman Stotts to lunch with Judge Porteous, again to develop trust, reputation, stability on our part, that was a good way for the insurance company to give us a high writing level.

And for the Senators and other people, a bond is a piece of paper, and it's really an insurance policy. So if the insurance company can give you blank checks, so to

speak, then you can write any type -- any amount of bond that you want to write.

And the representative, Norman Stotts, would decide how much writing authority we would have.

Q So he was important to you?

A Yes.

Q Did you bring Judge Porteous to meals with Mr. Stotts?

A Yes.

Q Why did you do that?

A Again, to establish trust and stability and political connections and to make us look important to the insurance company.

Q In 1996, did you arrange for Judge Porteous to speak at a bail bonds convention in New Orleans?

A Yes.

Q Tell us what that entailed.

A We hosted the bail bond convention, I think that was the summer convention, at the Royal Sonesta Hotel, spending a lot of money is what it entailed, renting like a little jazz band and a block of rooms. And really, it was a big party.

But other bondsmen from around the country came to attend also.

Q And would you have paid for food and drinks for

Judge Porteous?

A Yes.

Q In 1999, did you arrange for Judge Porteous to speak at a bail bonds convention at the Beau Rivage?

A Yes.

Q What is the Beau Rivage?

A It's a casino in Biloxi, Mississippi. And when you say did I, the company did. So a representative from our company.

Q Bail Bonds Unlimited?

A Yes.

Q And would you have paid for drinks and food for him there as well?

A Yes.

Q Throughout the 1990s, were there additional times that you took Rhonda Danos, Judge Porteous's secretary, to Las Vegas?

A Yes.

Q Ms. Marcotte, did you ultimately plead guilty to a corruption offense arising from your giving things of value to judges and sheriff's deputies?

A Yes.

Q What was your sentence?

A Three years' probation with six months' home confinement included in the three years.

Q Did you complete your probation?

A Yes.

MR. GOODLATTE: Thank you. That's all the questions I have.

CHAIRMAN MC CASKILL: We have -- the vote has been called, and so rather than have you interrupt your cross, I think we will adjourn.

And the first vote, let me see if I can do the math here, the first vote, which would be 20 minutes, beginning at 11:20. The second one -- we are going to reconvene at 11:40. And that's assuming that the third vote has been called.

But I would just ask all the Senators to vote immediately when the third vote is called and come directly back here so we can finish at least this witness -- if we finish this witness before lunch, we're actually on schedule. So let's see if we can't get that done. Thank you. Thank you.

THE WITNESS: Thank you, Ms. Chairman.

(Recess.)

CHAIRMAN MC CASKILL: We have seven members so we will proceed.

I believe we were ready to begin cross-examination, Ms. Marcotte.

CROSS-EXAMINATION

BY MR. TURLEY:

Q Good afternoon, Ms. Marcotte.

A Good afternoon.

Q We met before. I did your deposition earlier, if you recall.

A Yes.

Q I'm going to start with some simple questions that are yes-or-no questions. If you want to answer more, feel free to do so. But let me start with you never gave cash directly to Judge Porteous; correct?

A No.

Q And you never made a campaign contribution to Judge Porteous; correct?

A No.

Q And once Judge Porteous became a federal judge, from that day to this day, he's never executed a bond for you, your company, your family; correct?

A That's correct, not as a federal judge.

Q Have you ever been to Las Vegas with Judge Porteous?

A I don't think so.

Q Now, isn't it correct that Judge Porteous never asked you for a percentage back from any bonds he set?

A That's true.

Q In fact, he never asked you for any money in

return for bonds; correct?

A Not cash, no.

Q Did he ever trade you anything for bonds? Like I'll sign this bond if you give me something of value? Did he say that to you?

A Well, there were the lunches and then the car repairs and the house repairs. But --

Q I didn't mean to interrupt.

A No, I'm -- not for cash, no.

Q But did he ever have a discussion with you about what he would get in return for bonds? Did he sit down and say let's talk about what I would get in return for bonds?

A No.

Q How many bondsmen were -- I don't know if you say bondsmen or bondspeople. How many bondsmen were working in Gretna in 1993 and 1994?

A Are you speaking about our office or --

Q Just -- just generally.

A I don't know. 10.

Q 10. And what percentage of that business in 1993 and 1994 did Bail Bonds Unlimited control in Gretna, would you say? What percentage would you put on that?

A In the '90s. But I was just asking you if you were speaking about our office. Because you were speaking of bondsmen or bondspeople, which are licensed agents.

So --

Q Let me clarify that. And you shouldn't hesitate, if I say something inaccurate, feel free to have me clarify.

I'm really talking about bond companies collectively. You know, you've got Bail Bonds Unlimited. How many competitors, I suppose if that's the way you put it, did you have in Gretna during that period of time?

A Maybe two.

Q Two. Thank you for --

A Some people from New Orleans would come to write bonds too every now and then, but mainly just two others.

Q Okay. Did you testify previously that you thought you did one or two dozen bonds a day?

A I don't recall that. I didn't think that I could put a number on it.

Q You couldn't give us an estimate of what bail bonds you did on average a day?

A Which year are you speaking, at the very beginning?

Q 1993-1994 again.

A I really don't recall. It could be that. That could be.

Q All right.

A 2000 --

Q If you don't recall something, it's fine.

A Maybe what's a little confusing, is it's not so much how many bonds that are done. It's -- how many defendants that we get out. It's how many bonds.

Because one defendant could have more than one charge, which would result in three or four bonds for one person.

Q Sure.

A So, I mean, to ask me how many bonds exactly, I really don't know.

Q Ms. Marcotte, I'm going to show you a demonstrative that we have had up in the court before. And this shows the number of bonds in the record.

MR. TURLEY: Before we do this, Madam Chair, you had raised the supporting bonds. And we would like at this time to move in House Exhibit 350, and I believe it's 350I. There's 56 bonds. And House Exhibit 351, and I believe it's I -- actually, it's 1. So it's 350(1) and 351(1). Those House exhibits contain, the first one, 56 bonds, and the second one, the 26 bonds. And those are the bonds that support this demonstrative. I'd like to move them into evidence.

CHAIRMAN MC CASKILL: Is there objection?

MR. SCHIFF: Madam Chair, we have no objection.

CHAIRMAN MC CASKILL: They will be received.

(House Exhibits 350(1) and 351(1) received.)

MR. TURLEY: Thank you, Madam Chair.

BY MR. TURLEY:

Q If you look at this -- and you can actually see it on that screen, or if your eyes are better than mine, you can see it up here. Do you see down on October 28 it says, "Judge Porteous sworn into federal bench"?

A Yes.

Q Okay. And then the day before, do you see it says one bond signed?

A Okay. Yes.

Q And then on the 26th do you see where it says one bond signed?

A Yes.

Q Then you skip a few -- there's nothing on 25, 24. And then on the 23rd it says one bond signed.

Do you see that?

A Yes.

Q Okay. Does it surprise you to have only three bonds in that period?

A Not really. I don't know what was going on that week, I mean, if he was in the courthouse or not.

Q How about the previous week, do you see that? It says on the 18th and 19th there were two days with bonds with a total of six bonds. Would that be uncommon to have

six bonds in that week?

A A little bit. I mean, I'd have to see the bonds themselves. Some bonds we would hold that we couldn't get split or set and bring them at that time.

Q Does that seem like an unusual number of bonds for a given week, or did it just fluctuate from week to week?

A No, there were more bonds written than what's up there.

Q I mean, these are the only ones signed by Judge Porteous. So does that seem -- is it strange to you that -- I mean, does this seem like a strange number of bonds? I mean, were there weeks where he just had six bonds like that to sign?

A Sure.

Q And were there other periods where he had more bonds to sign in a given week?

A Mr. Turley, I'm just confused because you're saying that he had to sign.

Q That you brought to him to get him to sign.

A It varied, yes. Like the week -- the month -- I'm sorry, the week before, there's a lot of bonds on that week. And then the next week, there's a few bonds. And then less the last week. I mean, is that unusual? That's a lot of bonds, I think, to go get done with the judge.

Q So let's take a look at that week that you were mentioning. I think you're looking, if I'm correct, at October 10, 11, 12 and 13. And I'll quickly do the math. That looks like you've got four, five, three and five. So you've got 17 bonds that week.

Was that a lot of bonds to move in a week?

A I think in 1994, yes.

Q Okay. All right. And then the week before you have three bonds; right? So did it just -- was that part of the nature of the business, you would just fluctuate from week to week?

A Well, the business evolved over time. You know, in the late '90s, we were doing a lot -- a lot of bonds because it became more of a -- a thing that people did. But back in '94, I think that's a lot for '94.

Q So when you said that in '93 you had more bonds than '94?

A No, I said in the later '90s. And also, more people were being arrested towards the end of the '90s also.

Q I'm sorry, could you repeat that?

A Towards the end of the '90s, more people were arrested. So when you're asking me, are you just asking me specifically about 1994?

Q I'm just trying to get an idea of whether this

was an irregular number of bonds for a given month in 1994.

A I think so, yes. In '94, yes.

Q And you're saying because it's -- you would expect it to be higher or lower?

A Lower.

Q Okay. So you would -- would you expect that, then, for this month to have less than 10 bonds in '94?

A I really don't know, Mr. Turley.

Q So you're really not sure whether it would be higher or lower?

A I'm not sure what you're trying to get at.

Q I'm trying to understand your testimony. Because you said that you thought this was probably an unusual number of bonds. And so I just want to make sure that we've got 27 bonds -- actually, 29 for that month. And so I want to just make sure that I understand that -- are you saying that a normal month would have fewer bonds?

A No. If you put it like that, 29 bonds in a 30-day -- 31 day month is about one a day. So I think that's pretty normal.

Q Okay. That's --

A But on the second week, there's a lot of bonds in the second week.

Q Oh, I see. Because they're sort of jumbled up?

A Yes.

Q Okay. Now, let me ask you about these bonds and magistrates. It was your understanding that magistrate judges were judges who were selected by rotation; correct?

A That's correct.

Q And it was for a one-week rotation, you were made a magistrate judge for a week?

A Yes.

Q And isn't it true a lot of judges didn't like to do that?

A Yes.

Q They sure didn't like being magistrates?

A Sure.

Q And didn't some -- some judges have a reputation for not being available as a magistrate?

A Sure.

Q Very hard to reach?

A Yes.

Q But business didn't stop during that week; right? If a magistrate wasn't available, then you or your brother would try to find a judge who was available; correct?

A Yes.

Q Didn't you testify sometimes you'd just go to the courthouse and see who was in their chambers and try to get a judge to deal with a bond?

A Yes.

Q And weren't there also some judges that were criticized for not doing enough bond work, that they just had a reputation for not doing a lot of bonds?

A Sure, there was some judges that didn't like to do bonds.

Q Now, you testified earlier that sometimes Judge Porteous would turn down bonds from you and your company; correct?

A Sure.

Q And you also testified as to his standard operating procedure. Wasn't it common for the judge to confirm information about a bond before signing it?

A Sometimes, yes. That was standard, yes.

Q And isn't it true that either he or Rhonda would often call a jail or maybe a prosecutor or even a police officer on occasion to confirm information?

A Yes.

Q And on occasion, didn't you see Judge Porteous himself do some of that confirmation work?

A Sure. You have to call the jail. If a judge is going to split or set a bond, they have to call it into the jail anyway. So if they were calling to check out the information, they wanted to do it, then they would give the information to the jail at that time.

Q But he would confirm the information that had been given to him at that point; correct?

A Sure.

Q And didn't you state earlier in your deposition that he would at times call the arresting officer, even, to confirm information?

A Sure, yes.

Q Now, I know that district attorneys were not always involved in bonds. But was it your experience that if the district attorney did not want someone bonded and objected to a bond, that the courts -- the judges would generally yield to that and would not grant the bond?

A Well, it wasn't -- it wasn't a hearing. It really wasn't an ex parte hearing where a district attorney is in the judge's office objecting.

I mentioned to you in the past, in the deposition, about them writing VP on the jail sheet, meaning vertical prosecution, that they were multiple bail candidates, from the district attorney's office, and that was an indication usually that it's someone they wanted to multiple-bail.

Q Wasn't it true also sometimes district attorneys would just make it known to a judge they didn't want someone bonded?

A Say the question again?

Q Isn't it also true that sometimes a prosecutor would make it known to the judge or his chambers that they do not want someone bonded?

A That happens. But that's not normal.

Q Right.

A That's not the norm. Yes.

Q But it happens?

A Yes.

Q When they feel strongly about it?

A Yes.

Q And would that sometimes -- I mean, would it be uncommon, for example, for prosecutors to catch a judge in his chambers or in the hall and just say, you know -- you know, we really oppose this guy getting a bond, and just to make the judge aware of it?

A I don't know any -- anything like that.

Q That's fine.

I want to get to the subject, we talked a little bit about overcrowding in Jefferson Parish. And during the 1980s and 1990s, there were overcrowding orders that were governing releases in the jails; right?

A The jail releases were controlled by the deputies at the jail.

Q Yes. Let me -- let me break the question up. Were you aware that Jefferson Parish had mandatory court

orders on overcrowding during the period?

A Yes.

Q And wasn't it true that that -- those orders then mandatorily forced the release of a lot of prisoners?

A Yes.

Q And indeed, wasn't it true that during some periods, one prisoner in often meant one prisoner out?

A Well, the federal court order that you're speaking of applied to misdemeanor charges first, the most nonviolent people with the less serious crimes would get out first.

MR. TURLEY: Madam Chair, we would like to move into the record Porteous Exhibits 1112 and 1113. The first one is the Hamilton decision that we're talking about or making general references to in terms of overcrowding. 1113 is -- also deals with overcrowding, and it's a publication from the Bureau of Government Research.

MR. SCHIFF: Madam Chair, we have no objection.

CHAIRMAN MC CASKILL: Exhibits will be received.

(Porteous Exhibits 1112 and 1113 received.)

MR. TURLEY: Thank you, Madam Chair.

BY MR. TURLEY:

Q Now, let me ask you about those people that were mandatorily released. Isn't it true that there were a lot

of complaints among judges and prosecutors that once these people were released, they often vanished, didn't come back to court?

A I don't think that judges and prosecutors complained when people didn't come back to court in any fashion.

Q But I'm asking specifically about people who were released during that period of overcrowding, wasn't it commonly discussed how many of the people released during that period, and that is on their own recognizance, simply disappeared?

A Yes, and that was a great argument for us as bail bond people.

Q That wasn't a frivolous argument; right? Isn't it more likely for someone to be brought back to court if they have a bond on them?

A Sure.

Q And why is that?

A Because a person doesn't go to court on commercial bond, then we send bounty hunters out to pick them up.

Q So you have an incentive to go find them; right?

A Yes.

Q And if you don't have that incentive to go find a bond jumper, then how is it that they ever find

themselves back in court if they don't want to be, if they jump their bond? How would they be found out in the normal course of things?

A The police stop them or someone turns them in.

Q So it would be sort of random or accidental, like a traffic stop?

A Yes, that's correct.

Q Now, isn't it true that many judges preferred to have bonds on prisoners for that reason, because it increased the chances that they would see these people again?

A Yes.

Q And one of those was Judge Porteous; correct?

A Yes.

Q And didn't Judge Porteous often talk to other judges about the value of having bonds on prisoners for that reason?

A Yes.

Q Let me ask you about split bonds. Split bonds weren't illegal; right?

A No.

Q In fact, most judges in Gretna did split bonds; right?

A After one point, yes.

Q Now, was it your experience in the bond business

that sometimes a bond was simply set too high because of the original charge in the case?

A Any bond that we couldn't make was too high.

Q No, I understand that, and I respect it. But I'm asking more generally. Isn't it true that sometimes a bond will be set very high because of the original charges in a case --

A Yes.

Q -- but that -- I'm sorry?

A Yes.

Q But that the case can change. Those original charges can be moved down so that the person is actually facing a charge that is lower than that original charge; right?

A And that would come after screening in the district attorney's office, usually a month later.

Q And didn't judges sometimes use split bonds to take care of that problem, that if the bond was set too high, sometimes they did split bonds, they would listen to the arguments and split a bond if they thought it was too high?

A Can you rephrase the question, Mr. Turley?

Q It's no problem at all. I mean, isn't it also true that some judges would split a bond when they thought that the original bond was simply artificially too high?

A Sure, yes.

Q Now, you had spoken to us in deposition that you thought the judge was one of the more experienced judges.

Do you remember our conversation about that?

A Which judge, Judge Porteous?

Q Judge Porteous.

A Yes.

Q Now, he was specifically viewed as experienced in the criminal docket, was he not?

A In our opinion, because that's all we dealt with, was criminal bonds.

Q But he had a general reputation for being a judge that was experienced in criminal matters; correct?

A Yes, Judge Porteous was a district attorney before, a great prosecutor, you know, great jurist too.

Q And he was also a judge that was known to know a lot about the bond aspect of the docket; correct?

A Yes, we spent a lot of time talking about it.

Q Now, we also talked about the judge preferring to have bonds rather than people going out on their own recognizance. In your experience, isn't it true that you believe that the chances that someone will return to court are significantly higher if they have a commercial bond on them?

A Of course. And that's what the whole bail bond

industry is about. And of course, I was an advocate for making commercial bail bonds. That's how we made money.

Q But that wasn't a lie; right? That was your real view, wasn't it, that they were more likely to come back to court if they had a bond on them?

A If I wasn't in the bail bond business, it wouldn't matter. But yes, I would think, yes.

Q I want to ask you about Rhonda Danos. She was a friend of yours; right?

A I met Rhonda through the courthouse, through Judge Porteous's office.

Q Didn't you celebrate New Year's Eve together in 1993 and 1994?

A Yes.

Q And you went to a Rolling Stones concert together?

A Yes.

Q And you went on one trip with her, and shared a room with her, wasn't that true, to Vegas?

A We went on more than one trip, but on one, the first trip, we shared a room together.

Q And that was the one in Las Vegas?

A Yes.

Q And we had talked earlier about how Bail Bonds Unlimited would sometimes use Ms. Danos to assist in

planning trips and activities; correct?

A Yes.

Q Did she also help arrange social functions back in Gretna on occasion, like lunches and one Christmas party; correct?

A Yes.

Q Now, working in Gretna as a legal community -- I know that Jefferson Parish is fairly significant in size, but the legal community in Gretna is relatively small, right, most people know each other?

A Yes, that's correct.

Q And they tended to socialize with each other; correct?

A I don't know about everyone else.

Q I mean, did you see lawyers and judges often having lunch together and seeing each other at parties, for example?

A Well, there were a lot of fundraisers where I saw judges -- I mean, lawyers and other judges at fundraisers. I may have seen a judge with another lawyer a few times.

Q Well, let's talk about specifically the lunches that you know of. You would often -- I should say Bail Bonds Unlimited would often have relatively large lunches for judges, correct, you know, five or more people at a

given lunch?

A Yes.

Q And you had testified earlier that these lunches, that there would be just a lot of casual talk, as lunches usually have; correct?

A Yes.

Q And so you would said that sometimes people would talk family, sports. These were just lunches that people would relax, eat and talk; correct?

A Well, the lunches I attended with Judge Porteous and other judges, Bail Bonds Unlimited paid for the lunches, and we thought it was rude to speak about bonds at the table. We would do that before lunch or after lunch, but normally not during lunch.

Q I understand. In fact, you previously testified that you wouldn't bring bond worksheets to lunch because you thought that was rude; right?

A Yes.

Q And you don't specifically recall any lunches, I believe from your previous testimony, with Judge Porteous after he became a federal judge; right?

A Yes, there were -- there were lunches after he was a federal judge.

Q So when we asked you that earlier, you said you didn't remember any specific lunches when he was a federal

judge, do you now remember specific lunches?

A Well, after -- you asked me that in the deposition. Then Mr. Dubester reminded me about previous testimony that, you know, when you asked a bunch of questions, I left a few things out. But there were several lunches, and they're very vivid lunches. But when asked like that, I couldn't point them out.

If you show me some other documents or pictures, I could probably think of many more, too.

Q Many more? You think there were many lunches you had after he became a federal judge?

A Well, when Mr. Dubester had, I guess, recross-examined me or questioned me again after your deposition, there was the lunch with Kerner and Santini. I remember a couple of lunches with Judge Green's staff after he was a federal judge. And then my brother had some lunches, Emeril's lunch with Judge Bengé and some other people during that time.

So if I really start to look at things to make me remember, yes, I could probably remember a lot more.

But just like off the top of my head, it's a long time ago.

Q Right.

A And a lot of things have transpired since then.

Q Okay. So I -- you gave us some good -- some

lunches there that were very specific, and those are the ones right now that you recall; correct?

A Well, yes, those ones I recall, but also those are the ones that came up after I said that I didn't remember the lunches after Judge Porteous was a federal judge, that was re-brought to my attention and --

Q By Mr. Dubester?

A Yes. And you were there too.

Q Okay. Now, let me ask you, we talked about the parking lot that Bail Bonds Unlimited had.

A Yes.

Q And I asked you, this was in the mid-1990s, whether anyone could really park in that lot in the mid-'90s -- I'm sorry, did anyone pay to use the park -- to park in the lot in the mid-'90s, and you said no; correct?

A Yes. We had talked about the beginning of the '90s too.

Q Yeah. And so it was an open lot; correct?

A What timeframe?

Q We're talking about the same timeframe, during that period that there was -- we had talked about it being an open lot that people could get into, didn't have a gate or anything.

A At one point -- at one point to access the lot, you had to drive through the two buildings. We had two

houses, and cars had to drive through. So it wasn't really open where anyone could drive through it.

Maybe in the previous years -- I really don't remember. They had a building in the back; they tore the building down. I don't remember what year that was.

Q You don't recall when it had become more difficult to get into the lot?

A I do remember that there was a parking meter and we were trying to get one of the parking meters removed so we could have better access to the lot. And the city of Gretna did not let us remove the parking meter, which leads me to believe it wasn't so easy to get in and out of the lot.

Q Why would a parking meter make it more difficult to get in and out of the lot?

A Well, we owned the property behind the building, and we wanted to be able to pull in and pull out the other side. So people couldn't just drive in from the other street.

Q But you testified earlier, am I correct, that people did, in fact, sometimes park in that lot that you didn't know?

A Yes. In not just the lot. We owned the whole block across the street from the courthouse, and there's this big building with a bunch of parking spots in the

front, and people could pull up any time and park. I mean, the public wouldn't, you know, have to be the parking police, stop, you can't park there. And we were busy doing bonds, not running a parking lot at that time.

Q This was not a big part of your life?

A Right, no.

Q Let me just quickly -- I just wanted to deal with a couple of things. You never actually saw the fence repairs by -- done on Judge Porteous's house, did you?

A No.

Q And you're not aware of any records that you've seen from you or BBU paying for those repairs; correct?

A No.

Q And Judge Porteous never asked you for the repairs, to ask you to send someone to repair his fence; correct?

A No, not myself personally.

Q And after Judge Porteous became a federal judge, from that day to this day, have you or your company ever done car repairs for Judge Porteous, after he became a federal judge?

A No, not that I know of.

Q From the day he became a federal judge to this day, have you or the company ever done home repairs?

A No.

Q I want to get an idea of also not just the lunches involving Judge Porteous. Do you remember attending a lunch where former Senator John Breaux was present?

A Yes, I do.

Q Where was that lunch held at?

A Ruth's Chris on Broad Street in New Orleans.

Q Did BBU pay for that lunch?

A Yes.

Q And Ruth's Chris Steak House is pretty pricey, isn't that true?

A Yes.

Q In fact, I think one of the House managers mentioned that's sort of high end?

A Yes.

Q And did -- is it true that your company then paid for a limousine to take Senator Breaux to another location?

A Yes.

Q And BBU paid for that; correct?

A Yes. I think that was through one of our employee's company credit card.

Q Okay. Thank you. Now, when you first began the bond -- when you first got into the bonding business in the late '80s, isn't it correct that Adam Barnett had more

interactions with judges in Gretna than you or your brother; correct?

A Yes, that's correct.

Q And it's true that Adam Barnett knew Judge Porteous through that process?

A I'm not sure how Adam knew Judge Porteous. Maybe through his father was an attorney.

Q That's right, his father was -- it's a small community and his dad was one of the attorneys practicing in that city; correct?

A Yes. But I really didn't have that much dealing with Adam's father. I don't know how Adam got to know Judge Porteous.

Q Fair enough. But there came a time when you and your brother stopped relying on Adam Barnett for communications with the judge; is that correct?

A That's correct. Let me back up.

We stopped relying on Adam for what, repeat that part?

Q That you didn't rely on Adam as much for interacting with judges, there came a point when it switched where you -- you and your brother primarily interacted with judges as opposed to Adam Barnett; correct?

A That's true. But still to almost the end of our business, Adam -- every now and then, Adam would come in

and do a bond.

Q Do a bond or two?

A Yes. But not -- not as often.

Q We -- I'm sorry, did you finish?

A Not as often as before. It slowed down tremendously.

Q Fair enough. Now, we had discussed in deposition about that sort of time period. And I showed you an article regarding Adam Barnett, an article dealing with a bond where he used his home as a surety.

Do you remember our discussion?

A Yes.

Q And I'm going to introduce House Exhibit 119Z, which is already in the record. We're going to put it up on your monitor there.

This is an article from the Times-Picayune dated September 13, 1993, with the headline that reads, "\$80,000 house is used as surety for \$300,000 in bonds."

Do you see --

CHAIRMAN MC CASKILL: Excuse me, Counsel. I don't believe that the exhibit has been offered.

MR. TURLEY: We thought we had. We would like -- thank you, Madam Chair. We would like to move it --

CHAIRMAN MC CASKILL: Our records show it as

unoffered.

MR. TURLEY: I apologize. I would like to move it into evidence.

CHAIRMAN MC CASKILL: Is there any objection to this exhibit?

MR. SCHIFF: No objection.

CHAIRMAN MC CASKILL: It will be entered into the record.

(House Exhibit 119Z received.)

MR. TURLEY: Thank you, Madam Chair.

BY MR. TURLEY:

Q Do you see that article?

A Yes.

Q And do you remember us talking about that article?

A Yes.

Q And do you recall that this was the period when you -- you all began to have more interactions with the judges, that this article was sort of embarrassing to the judges in Gretna?

A Yes. But we had more interaction with Judge Porteous before '93.

Q But isn't it true that your work with Judge Porteous increased after this article?

A Yes.

Q And isn't it also true that you stated that you had more contact generally with judges after 1993 than you did before?

A In '92, some judges were elected new to the bench, and which Judge Porteous got them at a lunch, which we paid for. And that's where I remember '92 being a lot of action with bonds.

Q I'm trying to get to your earlier discussion where you indicated that you began to rely less on Adam Barnett and started to have more interactions with judges. Do you remember our discussion of that?

A Yes. And I think that was -- that was way before '93. I think that was more '91, '92. Because at '92 is when we went to -- I took Rhonda to Las Vegas, was in 1992. So that was kind of more the turning point of starting to do bonds with Judge Porteous rather than Adam at that point. And actually, it was before that.

Q I see. You're saying that's what you would consider the starting point that you were just referring to?

A Not -- you're asking me about -- Adam never went away. Adam continued to do bonds in our office until a few years ago. So we never stopped using Adam. But it was, you know, maybe once -- once every year or -- I really don't know how to quantify that, maybe a couple times a

year.

We had offices in New Orleans, so to say how often Adam was in my life past this article, he still was around.

Q No -- and I understand that. I guess if I could rephrase it, I was trying to get towards our previous discussion that there came a time when you relied on Adam less, not that he disappeared entirely.

A Yes.

Q And that's accurate; correct?

A Yes, that's accurate.

Q And is it true that you testified previously that "after Judge Alan Green was elected, we started going to lunch with other judges, including Porteous"?

Do you remember that statement?

A Yes.

Q And I want to represent to you that Judge Alan Green was elected in November 1993. Does that sound right to you in terms of the day, around November 1993 when he was elected?

A I thought it was sooner, but --

Q But do you remember that he was elected at that -- at some point you recollected that he was elected and you started to go to lunches more often?

A Yes.

Q Now, let me -- I'm going to ask you about the things of all that lawyers and BBU and others would sometimes give judges.

Isn't it true that lawyers would often give gifts of different kinds to judges, like turkeys and cakes, in Gretna?

A I really don't know. I'm not a lawyer. I was a bail bondsman.

Q Okay. So let's stick with bail bondsman, then. It's true that you and your brother would often give cakes and turkeys and the like to judges in Gretna?

A Yes. And to the clerks and pretty much the courthouse.

Q And most judges would accept these occasional gifts that you would give, like turkeys?

A More the cakes than turkeys.

Q You did a lot of cakes?

A My brother's ex-wife owned a bakery.

Q And sometimes you would deliver shrimp to judges; correct?

A Yes.

Q Now, have you ever personally given cash to judges?

A Yes.

Q Now, in earlier testimony, you recalled that you

had given money to a Judge Cascio, for example. Do you recall saying that you gave Judge Cascio \$10,000 in an envelope?

A I said it was two payments and it was to someone in his office, not to him directly.

Q Is he still on the bench?

A Yes.

Q I'm not going to get into the other judges, we don't have to. But did you assume that all of the cash you gave to judges was going into their campaign?

A No.

Q But for the record, you never gave Judge Porteous cash, did you?

A No.

MR. TURLEY: Excuse me.

Madam Chair, we want to make sure that we move at this point Ms. Marcotte's deposition, which is House Exhibit 448, into the record as evidence.

CHAIRMAN MC CASKILL: Any objection?

MR. SCHIFF: I'm sorry, could you repeat, Counsel?

MR. TURLEY: We're just moving her earlier deposition with us, and I believe that is 448, into evidence.

MR. SCHIFF: Madam Chair, we have no objection

to the entire deposition coming in.

CHAIRMAN MC CASKILL: No objection. So moved.

(House Exhibit 448 received.)

MR. TURLEY: That's all of our questions. Thank you, Madam Chair.

CHAIRMAN MC CASKILL: Thank you.

Are there any questions for this witness by the panel?

MR. SCHIFF: Madam Chair, we have a couple of questions on redirect.

MR. GOODLATTE: Madam Chair, if you would indulge us for just a moment, count the time against us but we'll save time by --

CHAIRMAN MC CASKILL: Okay.

REDIRECT EXAMINATION

BY MR. GOODLATTE:

Q Ms. Marcotte, Mr. Turley had shown you a calendar listing bonds signed by Judge Porteous. Do you know if those were all the bonds that Judge Porteous signed, or only the bonds that the House was able to obtain?

A I don't think that's all the bonds.

Q Let me ask you about Rhonda Danos. Was one of the reasons you took Rhonda to Las Vegas that she was helpful to you?

A Yes, very helpful.

Q Now, just to be clear, you went to Las Vegas with Ms. Danos; your brother went to Las Vegas with Judge Porteous?

A That's correct. And my brother and I both went to Las Vegas with Ms. Danos after also, on another trip, on other trips.

Q And in every instance, you paid for the trips?

A Yes.

Q BBU paid?

A That's correct.

Q Mr. Turley asked you if Judge Porteous ever called the arresting officer, and you said sure. Weren't those instances when Judge Porteous was working extra hard for you in a situation where the judge needed to look for a rationale to reduce a bond?

A Yes, that's correct.

Q In other words, some judges didn't want to work with you, but Judge Porteous would find ways to justify your requests?

A Yes, he wanted to help us make money.

Q In addition to the -- in addition to the trips to Las Vegas, who paid for the Rolling Stones concert that you went to with Ms. Danos?

A I'm not sure. I'm not sure.

Q And did you have reasons in addition to friendship for taking Rhonda Danos to Las Vegas and otherwise treating her to entertainment?

A No.

Q Would you have taken Rhonda Danos to Las Vegas if she were not Judge Porteous's secretary?

A Certainly not.

Q Let me ask you about the limousine that Senator Breaux rode in. Who else was in that limousine with Senator Breaux?

A Judge Porteous, Melinda Kring, who was an executive -- administrative assistant with our office, and Rhonda Danos.

Q So would it be fair to say this was really another gift for Judge Porteous?

A Yes. And I guess for Senator Breaux too, if you want to put it like that.

Q Co-counsel wants me to clarify something. When I asked you did you have reasons in addition to friendship for taking Rhonda Danos to Las Vegas and otherwise entertainment, were you saying that you did have other reasons or you did not, other than friendship?

A Rhonda Danos and I were friends only through the courthouse. That's how I came to know her. And after the business went down, we weren't friends after either.

So the only reason we took Rhonda Danos to Las Vegas was to have access to Judge Porteous to do bonds.

Q So you did have reasons other than friendship?

A Yes.

Q And did you ever thank Rhonda Danos for all of her help?

A Yes.

Q And did you ever thank her when you went to Las Vegas?

A Yes. At the Mirage Hotel, I remember specifically under one of those fake palm trees that they have, we were drinking a pina colada, and I told her we appreciate every -- you know, letting us aggravate you like this, and that's why we're here in Las Vegas, to say thank you.

Q Mr. Turley showed you a newspaper clipping about a particular story about a bond setting, \$80,000 for a house for \$300,000 bond. DO you recall that?

A Yes.

Q And that was in 1993. Were you setting bonds with Judge Porteous well before that time?

A Yes.

Q How far back would you say?

A I would say at least 1991. It could be sooner. Because the trip to Las Vegas with Rhonda was in '92. That

was the winter conference of the bail bond convention, which usually was around Mardi Gras. So it would have been February of '92. So yes, we were doing bonds way before that article, and I think sooner.

Just take -- walk up to Rhonda, take her to Las Vegas and then a relationship with bonds developed before that. She wouldn't have just accepted to come to Las Vegas in February of '92.

So that would lead me to believe it was '91, or probably '90, late '91 -- I'm sorry, late '90 and '91.

MR. GOODLATTE: Thank you. Those are all the questions I have.

CHAIRMAN MC CASKILL: Any other questions by any of the parties? Questions by the panel? Do any senators have questions of this witness?

Thank you very much, ma'am. You may be excused.

THE WITNESS: Thank you.

(Witness excused.)

MR. SCHIFF: Madam Chair, the House calls Jeff Duhon.

CHAIRMAN MC CASKILL: For purposes of you keeping track, the House now has 14 hours and three minutes and Judge Porteous has 14 hours and 39 minutes.

Mr. Duhon, would you raise your right hand, please.

Whereupon,

JEFFREY JOHN DUHON

was called as a witness and, having first been duly sworn,
was examined and testified as follows:

CHAIRMAN MC CASKILL: You may be seated.

MR. JOHNSON: Thank you, Madam Chair.

DIRECT EXAMINATION

BY MR. JOHNSON:

Q My name is Hank Johnson, Mr. Duhon. Would you
state your full name for the record, please.

A Jeffrey John Duhon, Jr.

Q And, sir, where were you born?

A Gretna, Louisiana.

Q Is that where you were raised as well?

A Yes, sir.

Q How old are you?

A 51.

Q Did you get in any high school?

A 10th grade, finished the 10th grade.

Q All righty. And what did you do after you left
high school?

A I worked offshore, roughneck and roustabout.

Q Was that on an oil rig?

A Yes, sir.

Q And what does a roustabout or roughneck do?

A Anything, anything and everything on an oil rig.

Q General labor?

A Yes.

Q How long did you do that?

A About 10 years.

Q And at some point, you went to work for Louis Marcotte?

A Yes, sir.

Q Do you remember when that was?

A Oh, I was turning about 29 years old. No, I couldn't tell you a date.

Q Okay. How did you get to know Louis Marcotte?

A I met his younger sister, fell in love with her.

Q What's her name?

A Lisa.

Q And did you all end up getting married?

A Yes, sir.

Q Are you still married to her?

A No, sir.

Q What type of work did you do for Louis when you first started working for him?

A Was more like a janitor. I cleaned up, painted for him, opened offices that he was opening up, new offices, new businesses.

Q Did you do any construction work also?

A Yeah, a little bit. We was buying offices, he was buying offices and I was remodeling them.

Q I see. Did you ever deal with Judge Porteous?

A No, not at this time.

Q At some point you began to deal with Judge Porteous?

A Yeah, when I received my bail bonds license.

Q Now -- and prior to the time you were seeking your bail bonds license, did you have contact with prisoners or persons who had been arrested in connection with your relationship with Louis Marcotte?

A No, no, not until -- I didn't deal with that until I received my bail bonds license.

Q All righty. And so you at some point came to meet Judge Porteous?

A Yes, sir.

Q And was that in connection with your work with Louis Marcotte?

A Yes, sir.

Q And tell the panel how it came about that you met Judge Porteous.

A Well, once I received my bail bonds license, I was able to interview prisoners and do bail, post bonds.

Q Did you meet judge -- but you've testified that you met Judge Porteous prior to getting your bail bonds

license; is that correct?

A Off and on. You know, I knew who he was but I didn't really meet him, you know, like shook hands or sat down with him.

Q Well, tell me, did you -- did you ever perform any services for Judge Porteous prior to becoming a bail bondsman?

A Prior -- once I became a bail bondsman, yeah, I did a couple things for him.

Q Once you became a bail bondsman?

A Yes, sir.

Q And what kind of things would you do for Judge Porteous?

A Well, I took care of a couple vehicles he owned, brakes, air conditioning, transmission and things like that, kept them up.

Q Were these vehicles that belonged to Judge Porteous?

A Yes, sir.

Q How do you know that?

A Because I used to pick his key -- the keys up from his secretary, Rhonda, once in a while.

Q Uh-huh. Was that at the courthouse?

A Yes, sir.

Q And so you would pick the keys up from the

courthouse, from the judge's secretary. And what would you do with the car once you had them?

A I would bring them to auto parts to get them fixed.

Q How many cars did Judge Porteous have at that time?

A Three of them.

Q Were they old or late model cars?

A They was old, late model cars.

Q Did they require a lot of upkeep?

A Yes, sir, sometimes.

Q Uh-huh. How often would you have to take care of Judge Porteous's vehicles, say, on a monthly basis?

A Once in a while. Some of them -- like I said, some of them was older than others. I'd take care of, like I said, air conditioning would go out, maybe the brakes, I'd pick them up and get them fixed. Exactly I don't know how many times.

Q Now, when you went to pick up these cars from Judge Porteous, who was it that directed you to do that?

A Louis Marcotte.

Q And that was in connection with your job for Louis Marcotte?

A Yes, sir.

Q Louis Marcotte would tell you to go pick up the

car?

A Yeah.

Q Or cars?

A He would tell me to go pick up the keys and take care of the automobile.

Q Okay. Did Judge Porteous ever pay you any money for taking care of his cars?

A No, sir.

Q And you would be on the clock, so to speak, with Louis Marcotte when you would do that?

A Yes, sir.

Q And were there any other things that you would do for Judge Porteous?

A Well, fixed a fence for him one time, besides took care of his cars.

Q So in addition to taking care of his cars, you repaired a fence?

A Yes, sir.

Q Was that a chain link fence or wood fence?

A No, wooden, wooden fence.

Q And what would you have to do? What did you have to do to --

A The fence was -- the fence was caving in, the pipes was busted. So I pulled the pipes out, reset the pipes, concrete, ran some two-by-four runners and put the

light boards on it.

Q Was this a small section of fence or a long section?

A I would say about 85 feet.

Q About 85 feet. So how long did it take you to do that?

A Took me about three days.

Q About three days. Full-time?

A Yeah. Well, not the first -- once I laid the concrete, it took about 12 hours to cure.

Q Now, did you do that job by yourself or with someone else?

A No, I had help.

Q Who was it that helped you?

A A fellow named Aubrey Wallace.

Q And did -- did you have to incur cost for materials to fix that fence?

A Yes, I -- I got it.

Q What did you have to purchase to fix the fence?

A I purchased, like, eight poles, eight bags of concrete, about 16 two-by-fours, about 180 lat boards from Home Depot.

Q Did Judge Porteous pay you to obtain those materials?

A No, sir.

Q Do you know how those materials were paid for?

A Louis Marcotte.

Q Did Judge Porteous ever pay you to repair the fence on his property?

A No, sir.

Q That was on Judge Porteous's home residence?

A Yes, sir.

Q And how do you know it was his home residence?

A Because I think his wife was there, and Louis told me it was his. That was the only time I'd been there.

Q Okay. Now, did you ever see Judge Porteous talking to Louis Marcotte?

A Yes.

Q Under what circumstances would you see Judge Porteous talking with Louis?

A I had lunch a couple times with them.

Q Any other places?

A Beef Connection, restaurants on the west bank.

Q Did you ever see Louis speaking with Judge Porteous in the judge's chambers?

A Yeah, me and Louis used to stop in to see him once in a while.

Q Did you ever go back to Judge Porteous's chambers with Louis while Louis was dealing with bond matters?

A Yes, sir.

Q Describe to this panel your impressions of how Louis Marcotte was treated in Judge Porteous's chambers.

A Well, sometimes we would go see him and get bonds done. You know, I'd interview people, and sometimes they wouldn't have the money. If you had a \$2000 bond and you didn't have the money, we'd get a split commercial -- cash commercial or signature bond.

Or sometimes me and Louis walked in there, they might have had 10, 12 lawyers sitting there, and we just went right by them, right straight into the back, more like open door policy.

Q And describe what would happen once you all would walk past the people waiting for Judge Porteous and get back to his chambers. What would you -- what did you observe?

A We would go in there with a couple sheets of paper that we had bonds done on them, and we would ask him, like I said, if the bonds was too high and couldn't make them, we would get them split. We would ask the judge, you know, Judge, this fella can make a \$50,000 bond, the bond may be 150. We would post cash commercial on the 50 and give him a signature bond on the rest of it.

Q Would your -- would the bonding firm make any money on a signature bond?

A No.

Q But you would make your money on a commercial bond; is that correct?

A Yes, sir, uh-huh.

Q What -- how did that work? Explain it to the panel, please.

A Well, cash commercial bond, if the bond -- let's say the bond is \$10,000, 12-1/2 percent, which comes to like \$1300, the state would get like 2-1/2 off the top, our insurance company got two and the remaining would come to us.

Q So is it fair to say that if the number of bonds -- the more bonds that you were able to split resulted in the bonding company making more money?

A Yes.

Q Did you ever -- you mentioned lunch -- lunches. Did you ever attend lunches -- did you ever go to lunch with Judge Porteous and Louis Marcotte?

A Yes. Yes, I went to a couple.

Q Can you tell the panel what would go on during those lunches?

A Sometimes no telling who would show up there. But we would go sit down and have a nice lunch, drinks if you wanted them, and whatever you wanted to eat.

Q How many people would -- would be there?

A There's no telling. Sometimes it could be 10, 12, could be five, could be three.

Q Now, you've testified about before you received your bail bond license and after you received. After you -- how did it occur that you were able to -- well, let me ask you this question.

 At the time that you first started working for Louis Marcotte, had you already suffered a conviction for a felony?

A Yes, sir.

Q What was that felony conviction?

A Burglary, a burglary charge.

Q What was the sentence that you had received on that judgment?

A Nine years suspended sentence, five years probation.

Q And at the time that you first met Louis Marcotte, had you completed your probation in that case?

A Yes, sir.

Q You were under no legal disability?

A No.

Q And that prior felony conviction, was it an impediment for you, in terms of what you wanted to do with your -- with your life, your job?

A Yes. Well, it stopped me from receiving a state

license.

Q How was that?

A Because you can't hold a state license with a felony in the state of Louisiana.

Q So you could make a lot more money if you became a bail bondsman?

A Yes.

Q So that's what you -- how did it come to pass that you decided you wanted to become a bail bondsman?

A Well, Louis. Like I said, I fell in love with his sister, we started living together, we was going to get married, and he asked me to come to work for him.

Q And did you tell him about the felony conviction?

A Yes.

Q Did you mention to him that you wanted to go into the bonding business?

A No, he asked me.

Q He asked you?

A Yeah.

Q And you decided that it sounded like a good deal?

A Uh-huh.

Q Well, how was it that you were able to become a bail bondsman?

A I told him I had a felony conviction, and he said he would take care of it.

Q And did Louis take care of it?

A Yes.

Q How did he do that?

A He had the judge expunge it, had the record expunged.

Q Now, did you hire a lawyer to have your felony burglary conviction expunged?

A No, sir.

Q Did you have a lawyer to handle that?

A No, sir.

Q Did a lawyer appear in court to handle that?

A Not that I know of.

Q Well, how do you know that Louis had anything to do with it?

A Because he told me he took care of it one day. He said, you go take the test for your license.

Q Have you ever heard of the name Wayne Walker?

A Yeah.

Q Okay. Who is Wayne Walker?

A A lawyer in Jefferson Parish.

Q Do you -- do you know whether or not Wayne Walker was involved in the obtaining of the set-aside of your burglary conviction?

A A little bit. He's the one gave me a piece of paper, said it was done.

Q You never sat down in his office and met with him about it?

A No.

Q You never paid him anything?

A No, sir.

Q Did you ever go to court to have it done?

A No, sir.

Q And so who was it that -- which judge was it that expunged your felony conviction?

A He told me Judge Porteous did.

Q And how do you know that?

A He told me that.

Q Who told you?

A Louis.

Q Was Judge Porteous the judge who sentenced you originally?

A No, sir.

Q And so did it help you once you got this felony conviction expunged from your record?

A Yes.

Q How did it help you?

A Well, I went to class, I was able to get a bail bonds license, to post bail in the state of Louisiana.

Q And so have you had any other convictions since your record for the felony conviction of burglary was expunged?

A Yes.

Q What was that?

A I got a charge five years ago, conspiracy.

Q Was that on a drug case?

A Yes, sir.

Q And you were convicted or you entered a plea of guilty?

A No, I pled, pled guilty.

Q And your sentence was what?

A Nine months, three years probation.

Q Now, have you completed that sentence?

A Yes, sir.

Q Are you now under any disabilities whatsoever as a result of that sentence?

A No, sir.

Q In other words, you're off parole?

A Yes, sir.

Q Off probation. No pending charges?

A No, sir.

MR. JOHNSON: I have no further questions, Madam Chair.

CHAIRMAN MC CASKILL: Mr. Turley.

CROSS-EXAMINATION

BY MR. MEITL:

Q Good afternoon, Mr. Duhon. My name is P.J. Meitl. I'm one of the lawyers for Judge Porteous. Previously you were speaking with the Congressman about a burglary conviction. What year did that take place?

A Oh, I would say back, I don't know exactly what year, it was back like in the '70s, '76, somewhere around there.

Q Okay. Do you know how old you were at the time of that arrest?

A Yeah, I was 18 years old.

Q Okay. And did you plead guilty to the charge?

A Yes.

Q Now, is that the crime that you've -- you were discussing with the Congressman that was expunged?

A Yes, sir.

Q Did you go to jail for that crime?

A No.

Q Were you placed on probation?

A Yes, sir.

Q And what were the term of that probation?

A It was nine years suspended sentence, five years probation.

Q And can you describe in more general terms what

the probation meant, what you had to do?

A All I did was fill out a form once a month and sent it in to my probation officer.

Q So it was a rather light sentence?

A Yes.

Q Mr. Duhon, isn't it correct that Wayne Walker, the attorney you referenced with the Congressman, filed on your behalf a motion to set aside the conviction and dismiss the prosecution for the burglary offense?

A If he did, I had no recollection of him filing.

Q Okay. Well, why don't we put up the exhibit. It's HP Exhibit 77C. You can look at the screen there, Mr. Duhon.

All right. On this page about halfway down, you'll see an order from a judge. Right beneath the order -- do you see order there in the middle of the page?

A Uh-huh, yes, sir.

Q And below that, it says "considering the foregoing motion."

Can you read the rest of that, please. Can you read it out loud, sir.

A What do you want me to do -- "forgiving the motion, Gretna, Louisiana, this 16th day of June, 1993." It's somebody's signature.

Q Above that it says "it is ordered that the State

of Louisiana show cause on the 17 day of June 1993 at 9:00 why the foregoing motion should not be granted."

Do you see that?

A Uh-huh.

Q All right. Now, up at the top of that page, do you see the case number? We're going to highlight it for you.

A Yes, 76-770, division B.

Q Okay. And back to where that order was, there was a signature that you referenced. Do you know whose signature that is?

A No, sir.

Q And do you know if that's Judge Porteous's signature?

A No, sir.

Q I'm going to represent to you that that's a signature that was referenced earlier in testimony today of Judge Richards, but we'll get back to that.

Mr. Duhon, do you know -- well, let's look at the next page of that exhibit. It's going to flip. Now, up at the top do you see the case number there?

A 76-770.

Q Okay. And that's the same case number as the previous page?

A Yes, sir.

Q Okay. And do you recognize the signature at the bottom of this order?

A It looks like the same as the last one.

Q Okay. So that's Judge Richards's signature again.

Now, I'm going to go ahead and highlight that part of the order there. It says, "it is hereby ordered, adjudged and decreed that the conviction under Docket Number 76-770," and I'll skip ahead, "is hereby set aside on this 17th day of June 1993."

Do you see that?

A Yes, sir.

Q So Judge Porteous didn't sign the order setting aside the conviction, did he?

A That's the first time I've seen this.

Q Now, even though the conviction had been set aside by Judge Richards, there was one more ministerial step that had to take place, the expungement. Are you aware of that?

A No, sir.

Q Okay. I'm going to introduce HP Exhibit 77A. Now, this appears to be another motion filed by Wayne Walker on your behalf. This motion is a motion for expungement. On the third page, if we can skip ahead, again there's an order here, and I'll read it to you.

It says, "it is hereby ordered that the Jefferson Parish sheriff's office show cause on the 15th day of July 1993 why the motion for expungement should not be granted."

Do you see that?

A Yes, sir. Yes.

Q Okay. And do you see a signature below that above the word --

A It looks like the same as the first two.

Q Excuse me?

A It looks like the same as the first two.

Q Okay. So that's Judge Richards's signature again.

Now, did you go -- you said you didn't go to court for the hearing, did you?

A No, sir.

Q All right. Let's go ahead and put up the expungement order that Judge Porteous signed that wasn't introduced before. It's HP Exhibit 77B.

Now, isn't it correct that Judge Porteous signed this expungement order but only after Judge Richards had already agreed to set aside your conviction and had asked the state to show cause why the motion for expungement shouldn't be granted?

A I have no idea.

MR. MEITL: Madam Chairman, we'd like to move into the record Exhibits 77C, 77A and 77B.

MR. JOHNSON: No objection.

CHAIRMAN MC CASKILL: Are there any objections?

MR. SCHIFF: No objection, Madam Chair.

CHAIRMAN MC CASKILL: It will be admitted.

(HP Exhibits 77A, 77B and 77C received.)

BY MR. MEITL:

Q Now, Mr. Duhon, isn't it correct that Judge Richards, the individual whose signature you saw on those previous three documents, he had also, two years before Judge Porteous had expunged your record previously expunged a different conviction?

A I said I have no idea about these expungements. All I did, I went by what Louis told me. I never seen none of this paperwork.

Q Okay.

A And I didn't hire Wayne Walker.

Q All right. In 1976 were you arrested for multiple offenses?

A On what?

Q Well, I'm asking you.

A '76.

Q Were you arrested for anything more than the burglary charge?

A Yes.

Q What were you also arrested for?

A Burglary of an automobile.

Q I'm sorry?

A I think it was burglary of an automobile.

Q You stole an automobile?

A No. It was a radio.

Q You stole a radio out of an automobile? Okay.

And was that conviction expunged?

A No. I don't think I got charged. I think they dropped that. I only had one conviction, it was burglary of a business.

Q All right. Why don't we put up Porteous Exhibit 2006, which was an exhibit previously introduced earlier this morning. Mr. Duhon, this is an order signed by Judge Richards, if we turn to the second page, and you can see if you think that's the same signature. Does that look like the same signature as the previous documents?

A I don't know. It don't look like --

Q I'll represent to you that that was Judge Richards. Let's go back to the first page. Up at the top there, there's a case number.

Do you see that?

A 76-1505.

Q Yes. So, now, that indicates that the case was

from 1976. Do you think that this related to the automobile burglary of the radio?

A I don't know.

Q All right. So you don't have any recollection of Judge Richards expunging a crime that you committed in 1976?

A No, sir.

Q All right. Why don't we go ahead and pull up the caption of that case. Do you see your name there, Mr. Duhon?

A Uh-huh.

Q Okay. And then below that it says, "order. The following motion and annexed affidavit considered, let all the agencies and law enforcement offices including, but not limited to, the following," and then it lists several agencies.

And then it continues, "expunge and destroy any record of the arrest, photographs, fingerprints or other information of any and all kinds of descriptions relating to the following," and then it lists your name and a date of arrest of June 15, 1976.

Do you see that?

A Is this the -- this is the only document I received, this one right here.

Q I'm sorry, that's the only document you ever

received?

A (No verbal response.)

Q I want to make sure you're not confused between the various expungement orders. Why don't we put up Judge Porteous expungement order next to this expungement order. Judge Porteous's expungement order was 77B. It will take a second there, Mr. Duhon, but we're going to put them up next to each other.

All right. Now, these documents look very similar. Take your time and look at them if you'd like. But does this refresh your recollection as to which document you had previously seen?

A No, I know which one it was. It was the last one you showed me, because I had a couple. I mailed them off. I mailed them to the state police, Jefferson Parish.

Q Right. If you look at the one on the right there, that's the one, I believe, for Judge Porteous. That also lists various agencies that it needs to be mailed to, doesn't it?

A I can't see it from here.

Q Okay. Why don't we --

A Can you widen it?

Q We'll blow it up for you a little bit. Do you see that? Those are various agencies from the Judge Porteous expungement order?

A Yeah, I see it now.

Q Does that refresh your recollection as to which one of these you've seen before?

A No, now you confused me.

Q Okay. I understand. Now, at the time of your expungement from Judge Porteous, how old were you?

A Ooh, well, I was in my 30s. 15 years had went by.

Q So 15 years had gone by, and you were seeking expungement and Judge Porteous granted the expungement; is that correct?

A Yes, sir.

Q And Mr. Duhon, do you have any records relating to the expenses for the fence repairs that you were discussing?

A No, sir. No.

Q Mr. Duhon, how many times have you spoken to the House lawyers prior to your testimony today?

A Twice.

Q Were you ever shown these documents that I've shown you today?

A No, sir.

MR. MEITL: That's all the questions I have for you now, Mr. Duhon. Thank you.

REDIRECT EXAMINATION

BY MR. JOHNSON:

Q Mr. Duhon, you don't know whether or not Judge Porteous spoke to Judge Richards about your expungement?

A No, sir.

Q Or your motion to set aside; is that correct?

A No, sir.

Q And are you aware of the fact that Judge Porteous signed the expungement of your record?

A No, sir.

Q You're not aware of that?

A No, I didn't see none of the paperwork.

Q You were simply told by --

A Yeah, I seen one piece, and it was the second-to-last one you showed me.

Q And you -- again, the only thing you know is what Louis Marcotte told you?

A Yeah, he just told me he was going to take care of it and he took care of it.

MR. JOHNSON: All right. Thank you, your Honor.
No further questions.

MR. TURLEY: We have no recross, thank you.

VICE CHAIRMAN HATCH: Let's go on to the next witness. The House can call its next witness.

(Witness excused.)

MR. SCHIFF: Mr. Chairman, the House calls

Aubrey Wallace.

VICE CHAIRMAN HATCH: First of all, do any of the members have any questions that they care to ask at this point?

Without that, we'll proceed to the next witness. The next witness will be Aubrey Wallace, as I understand it.

MR. SCHIFF: That's correct, Mr. Chairman.

VICE CHAIRMAN HATCH: At this particular point the House has 13 hours and 43 minutes left and Judge Porteous's side has 14 hours and 28 minutes left, just for the record.

Whereupon,

AUBREY WALLACE

was called as a witness and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q State your full name for the record, please.

A Aubrey Wallace.

Q Sir, where were you born?

A Excuse me?

Q Where were you born?

A New Orleans.

Q Were you raised there as well?

A Yes, sir.

Q Is that where you continue to live?

A Yes, sir, still reside.

Q And, sir, how old are you?

A 51.

Q And, sir, have you ever had occasion to work for -- do you know a man named Louis Marcotte?

A Yes, sir.

Q Have you ever had an occasion to work for him?

A Yes, I worked for him a number of years.

Q And what type of work did you do for him?

A I started out with him just basically manual labor, working in his office, his bail bonds business, doing different jobs for him, cutting grass and running errands, numerous errands for him.

Q And at some point, did that employment relationship change?

A Yes, over the years, a period of time.

Q Uh-huh. How did it change?

A Well, I got more involved with the aspect of the bail bondsman business, so far as bringing paperwork to the jail, the bonds that they would write. Frequently, bringing paperworks up to different chambers, checking on bonds for him, to that degree.

Q Okay. Now, in connection with your work with

Louis Marcotte, did you have an opportunity to ever meet Judge Porteous?

A Yes, I did.

Q Tell the panel the circumstances under which you met Judge Porteous.

A Outside of being a judge at the 24th Judicial Court, he was a judge that Mr. Marcotte would frequently interact with with bonds.

Q What kind of interaction did you have with Judge Porteous?

A 90 percent of the time I would go with Mr. Marcotte, I was his personal driver, his protege, so I would go with him on mostly all the occasions that he would go up to the courthouse. And I got acquainted with Judge Porteous through Mr. Marcotte.

Q Did you at any time after you went to work for Louis Marcotte do any work for Judge Porteous?

A On some occasion I would go to the courthouse, and I would receive his automobile to take it to detail it, manual maintenance on it, to just wash it, whatever maintenance I had to do to it.

Q Was it on -- how many automobiles did Judge Porteous have?

A Well, it was only for me with one on numerous occasions, I would go and pick that automobile up. It was

a blue Cougar. But on one occasion, I think I picked an Oldsmobile up from him on one occasion.

Q Now, so how often would you go and pick Judge Porteous's car up?

A Maybe twice a month.

Q And when you picked him up, where did you pick him up from, and how would you get the keys to the vehicle?

A It was a process that they had a rear area in the courthouse that I was allowed to go into that area to redeem the car. They had a code you would hit for the gate, and I would receive the code from the secretary, and I would -- the keys would be in the car for me. I would have an understanding from Judge Porteous that the keys would be under the floor mat, and that's how I got the car.

Q And so you would take Judge Porteous's cars away from the courthouse, drive them to have some maintenance done?

A I sure wouldn't steal them. I would not enter that. It was a secure area, and you had to have passes to this area where most of the judges park. So I had permission to go get it.

Q And what services would you render on Judge Porteous's cars?

A I think on one occasion there was some audio problem with the car, and I took it to a place to get some

service. I think at that time a radio was installed, and on several occasion, I received the car, I took it to the oil change, and I would go to a detailing place, and they would do a full detail and fill it up with gas.

Q Were there ever any occasions that you would receive the car directly from Judge Porteous?

A Not directly, but he had knowledge that I was there. On one occasion or two occasion, I stood at the gate, and when I seen him pull in, I probably received the car right after that.

Q Now, did -- so who paid the bill when you would take the cars for service? Well, let me ask this question: Would you service the cars yourself, or would you take it somewhere to have its services rendered?

A No, sir, at no time did I do the service the car. I would take it to the place where I was advised to bring it.

Q The place where you were advised to bring it?

A Yes.

Q And what kind of place was that?

A It would be a mechanic's shop. It would be somewhere where some type of maintenance would be did to the car.

Q Now, who would it be that would give you instructions as to where to take the car?

A Mr. Marcotte.

Q Was that Lori Marcotte?

A No, Louis.

Q Mr. Marcotte?

A Yes, Mr. Marcotte.

Q All right. And when you would take it to have some services rendered, you would incur a bill for it, would you not?

A Well, there were prearrangement that when I brought the car there, I was understood that all I had to do was just bring the car there, and whatever that would take place with the car, I would call Mr. Marcotte and give him a understanding of what the price could be, what the nature of work they were going to do to that car, and then I was told to let it proceed.

Q Mr. Marcotte would tell you that?

A Yes, sir.

Q Do you know whether or not Mr. Marcotte paid the bills incurred for maintenance on the cars?

A Yes, he would.

Q Did Judge Porteous ever give you any money to take care of the repairs to his cars?

A No, sir.

Q Never?

A No, sir.

Q Were there any occasions where you would -- when you brought Judge Porteous's car back to the courthouse or back to some location for Judge Porteous to retrieve it, were there any times when you left additional items in the car for Judge Porteous?

A Well, there were certain occasions that we would -- they have parties, Thanksgiving or Christmas, of that nature. Some items, like shrimp would be -- ice chests full of shrimp would be put in position for me to put there or some bottles of Absolut vodka, those types of things that I would receive from the office.

Q And did that happen on more than one occasion?

A On several occasion.

Q Now, did you ever have occasion to perform any repairs on Judge Porteous's home?

A Yes, sir, I did.

Q What repairs were those?

A We went to his residence, and we dismantled a wooden fence, and we built it up. We took the pilings from under the ground, put new polling, and we did some cement work, slab work.

Q How long did that job take?

A Approximately two to three days at most.

Q And did you -- who did that work with you?

A Me and Mr. Duhon.

Q Mr. Duhon?

A Yes, sir.

Q Did you accompany Mr. Duhon to the store to purchase items to repair the fence?

A Yes, on two occasion.

Q And did Judge Porteous give you or, to your knowledge, Mr. Duhon any money to pay for the materials used for the repairs on his property?

A No, sir.

Q Do you recall how the items were paid for?

A I think they were paid by credit card. Well, I know they was paid by credit card.

Q Do you know which credit card they were paid with?

A At the time there was corporate Marcotte -- it was corporate credit cards for the company.

Q Uh-huh. What corporation were the cards --

A It was Marcotte corporation, something like that.

Q Did Judge Porteous ever pay you for performing the repairs at his home?

A Me personally?

Q Yes.

A No, sir.

Q Now, I want to take you back to around late

summer, early fall 1994. I want to ask you, during that time, did you have two convictions for felony offenses?

A Yes, I did.

Q Was one a burglary conviction?

A Yes, sir.

Q And the other was a drug conviction?

A Yes, sir.

Q Now, at some point, your relationship or your job responsibilities with Louis Marcotte changed from being the driver and doing the laboring kind of work to doing bail bonds; is that correct?

A Well, I would say my knowledge became more knowledgeable, the bail bonding business, and my desire was to be an agent.

Q How did it come to pass that you formed that desire?

A Seeing all the money that was being -- you know, it was a lucrative business, and it was something that one would want to be a part of.

Q There was a lot of money flowing through?

A A lot of money.

Q And it's fair to say that the Marcottes were just drowning in money?

A Bathing in it.

Q And you wanted to get a piece of it yourself?

A That's the American way.

Q But you had those two prior felony convictions?

A Yes, I did.

Q What was stopping you from becoming a bail bondsman and getting into that money?

A My conviction.

Q Did you discuss that at all with Louis?

A Yes. That was one of the conversation that Mr. Marcotte had. I built such a relation and rapport with Mr. Marcotte that he built and instilled such confidence in me that he would like to see me in that type of business, and I would be more of a help to him by having a license. There were areas that he was gradually growing, and he would want me to be a person that he can confide in to go in certain areas to work and establish his business a little bit more.

Q So he wanted you to get your bail bondsman license also?

A Yes. I wanted it myself.

Q You wanted it, and he wanted it?

A Certainly.

Q So you both could make some money?

A Well, certainly.

Q For him to make more money, I guess. But now, were there any plans made to proceed along so that you

could eventually become a bail bondsman?

A Of course.

Q What were those plans?

A Mr. Marcotte briefly told me that it was possible for me to get an expungement, that he had spoke to Judge Porteous in reference to my felony conviction on burglary and that it could be expunged, I believe, to where I can have a chance to obtain my license.

Q What would have to happen before your record for that conviction could be expunged?

A I mean, I guess court process. I'd have to go to court and go through whatever steps were necessary.

Q Did Louis tell you he would take care of everything?

A Yeah.

Q Did he take care of that?

A Yes, sir.

Q What did he do?

A Well, he came to the office, and he said look, this is the process, that you are supposed to report up to Judge Porteous's courtroom at such and such a time, and they're going to start the process on your expungement.

Q Okay. Now, when he told you that, when Louis Marcotte told you that, had you retained an attorney to handle that for you?

A No, sir.

Q Did you ever retain an attorney to handle that for you?

A No, sir.

Q Did an attorney handle that for you?

A Yes, sir.

Q Who was the attorney?

A On one occasion it was Mr. Robert Rees and the last process of it was Mr. Bruce Netterville.

Q And did you ever go to court?

A Yes, I did.

Q So how many times did you go to court?

A Two occasion.

Q Did you hear, see, and observe Judge Porteous do anything in connection with your motion to set aside, motion to expunge?

A Well, I mean, the first process, I just stood there, and Mr. Robert Rees really did all the interaction. I just sat there. And it was -- the first process, it was delayed, and then we had to come back.

Q And then what happened when you came back?

A On the second occasion, it was officially done.

Q Now -- so your burglary conviction was set aside by Judge Porteous?

A Yes, sir.

Q Now, you still had that little drug case floating around. What was going to happen with that?

A Well, that was another process.

Q Tell us about it. Were you aware of what the process would be in order to make that drug conviction go away?

A That would consist of a pardon, and that was the course we were going to proceed through next, but an article came out that prevented that.

Q An article came out that prevented you from seeking a pardon?

A Yes, sir.

Q That was an article in a newspaper?

A Yes.

Q Was that the New Orleans Picayune?

A Yes, it was.

Q What was the substance of the article?

A The substance of the article was the good ol' boy system is still alive and well in Jefferson Parish.

Q What did it talk about?

A It talked about me, as being a convicted felon, was expunged while I was on parole.

Q Did you feel like you were entitled to a -- to have your burglary conviction set aside?

A Not by law, but I guess I was.

Q Explain that to us. Did you feel like you were entitled to have it expunged, and if so, why? If not, why not?

A I would just say that I was fortunate.

Q You were what?

A Fortunate.

Q Did you feel like it was on the up and up, the process?

A Well, there was some courtesy there. That's all I can say.

Q Did you feel like it was a fix?

A I just had got leniency.

Q In your heart, do you feel like you deserved that?

A I just think that I was shown some compassion.

Q Sir, you mentioned this article that came out that prevented you from being able to petition for a pardon; correct?

A Yes, sir.

Q And I want you to take a look at that screen to your right, to your other right.

A I'm sorry.

Q Take a look at that and see if you can identify that.

A Let me get my glasses. I can identify it. I'm

familiar with that.

Q You're actually a little older than you look, needing the glasses.

A Yes, I'm familiar with that article.

Q And is that the article in question that prevented you from moving forward with your pardon?

A Yes, sir, it is.

Q And I turn you to what's been highlighted on the screen and ask you to read that.

A It says "United States District Judge Thomas Porteous, while serving his final weeks on the state bench in Jefferson Parish, illegally amended a convicted drug offender's burglary sentence and then removed it from the man's record, according to the Metropolitan Crime Commission."

Q Is that a factual statement that is true, or is it false?

A It's true.

MR. JOHNSON: One moment, please, Madam Chair.

MR. TURLEY: I'm sorry, Madam Chair. Was the House asking for a legal opinion as to whether that statement was true or as to whether it was in the article? I'm not sure.

MR. JOHNSON: I'm asking him whether or not the statement is true. I think it speaks for itself that it's

in the article.

THE WITNESS: I'm just telling you what the article says. I don't know the legality of it. It's just an article.

MR. JOHNSON: Madam Chair, I move for admission of House Exhibit 119A.

CHAIRMAN MC CASKILL: Is there any objection?

MR. TURLEY: No objection.

CHAIRMAN MC CASKILL: It will be entered into the record.

(House Exhibit 119A received.)

MR. JOHNSON: I have no further questions, your Honor -- or Madam Chair. Excuse me.

CROSS-EXAMINATION

BY MR. TURLEY:

Q Reverend Wallace, good evening.

A Good evening.

Q It is Reverend Wallace now, is it not?

A Yes, it is.

Q When did you become a reverend?

A About five years ago.

Q And what church are you associated with?

A I'm associated with a church in Jefferson Parish, Heavenly Star Missionary Baptist Church.

Q And what type of work do you do as a reverend

now?

A I'm assistant.

Q What type of work do you do as an assistant?

Can you give us an idea?

A My duties are to assist in baptism, to -- bible study, just basically teaching the word of God. When the pastor's not in a position or a capacity to preach, that's when I'm up. We rotate and such.

Q So basically --

A And visiting -- being a liaison for a church outside of that church, a representative.

Q Thank you, Reverend.

Reverend, I'd like to go back to what you were asked about in terms of your earlier convictions to try to clarify in our mind, maybe in your mind, as to what occurred. We're trying to put up a demonstrative exhibit here, but I think you have the same eyes I have. So you may be more fortunate using that screen.

A Okay.

Q I'm going to try to walk you through this so that the Senators understand what we're talking about here. We're really talking about two convictions; right? We had a drug conviction and a burglary conviction; correct?

A Yes, sir.

Q And they were totally separate cases; right?

A Yes, it was.

Q Okay. Now, the interesting thing about this is that if you look at that exhibit, the drug arrest occurred on December 15th, 1988.

Do you see that, that first one?

A I see that, yes, sir.

Q Okay. Now, the top of this exhibit deals with what we know about your history with regard to the drug charges, and then the bottom, the shaded portion, is what we know about the burglary charge. Now, one of the things I'm going to try to do here is sort of walk us through how this happened, because it sort of got jumbled up, and you might be able to help us.

A Okay.

Q So December 15th, 1988, you have the arrest for the drug issue; right?

A Yes, sir.

Q Okay. Now, if you go to the bottom, the next event that happens is that on May 8th, 1989, you're arrested for burglary; correct?

A Yes, sir.

Q That's your recollection today? Those are basically accurate facts?

A Yes, sir.

Q Now, if you look at the bottom of the exhibit,

there's a whole bunch of events with regard to your burglary charges where you pled not guilty and an arraignment and scheduling. What I want to point you to is under "1990," it says "6/26/90."

Do you see that?

A Yes.

Q If you look at the top of the demonstrative, nothing has happened in your drug case up until that point?

A Right.

Q It's on that occasion that it says Wallace pleads guilty, this is in the burglary case, Judge Porteous issues sentence, three years hard labor, suspension, and two years probation.

Do you see that?

A Yes, sir.

Q So at that point you actually have a conviction on burglary, but you have not been convicted or pled on the drug case; correct?

A That's right.

Q Okay. And so Judge Porteous is your judge who sentences you to probation; correct?

A Yes, sir.

MR. TURLEY: We're going to pull up House Exhibit 82. Madam Chair, House Exhibit 82 is a part of the record of Mr. Wallace. It's one of the pages in that

record. We'd like to pull it up, and I also would like to introduce this into evidence.

CHAIRMAN MC CASKILL: Is there any objection?

MR. SCHIFF: Madam Chair, there's no objection.

CHAIRMAN MC CASKILL: So admitted.

(House Exhibit 82 received.)

MR. TURLEY: Thank you, Madam Chair.

BY MR. TURLEY:

Q I'm going to ask my colleague to highlight the name of the judge from that case. Who was the judge that was assigned in the burglary case?

A Judge Porteous.

Q Thank you, sir. I'm also going to highlight the name of who is representing you at that time. Do you recall an attorney named Joseph Tosh?

A Yes, Joe Tosh.

Q Okay. Thank you.

MR. TURLEY: Madam Chair, we would also like to introduce House Exhibit 81, which is the rest of the case file for Mr. Wallace on these issues.

MR. SCHIFF: Madam Chair, we have no objection.

CHAIRMAN MC CASKILL: So admitted.

(House Exhibit 81 received.)

MR. TURLEY: Thank you, Madam Chair.

BY MR. TURLEY:

Q So Reverend Wallace, Judge Porteous was the judge assigned in your case, and he sentences you to probation on the burglary charge; correct?

A Yes, sir.

Q And then after that, if you take a look at the top of the exhibit, you end up pleading guilty on the drug charge; correct?

A Yes, sir.

Q But at that time when you pled guilty to the drug charge, you were already on probation, and it was for an offense that occurred before the burglary charge; correct?

A Right.

Q And do you remember your attorney telling you that this created a sort of confusion in the record, that it was sort of a complex case for that reason?

A In what way? What do you mean?

Q Did your attorney ever explain to you that these two convictions created a sort of conflict in terms of your probation versus the record in the two cases?

A Yes, sir.

Q And if you take a look down by the -- on the burglary portion, the bottom half, on December 11, 1991, it says "Wallace's probation terminated," and it says "as a result of his imprisonment" -- this is a part of your

arrest -- "he cannot complete probation."

Do you see that?

A Yeah.

Q This is what I want to ask you. When you see this laid out like this, during that time between when you were given probation by Judge Porteous, you actually hadn't committed any new crime; right? Because the drug crime was before he gave you probation; correct?

A I've got to look at it again. It's been so long, sir.

Q It's okay. Take your time, because this can be a complex demonstrative. Let me walk you through it. If you take a look at the top of this exhibit, you will see that you were arrested on December 15th.

Do you see that?

A Yes, sir.

Q And then if you go all the way to the next part, it says 2/91 where you plead guilty to that crime.

Do you see that?

A Right.

Q There's no record between those two dates of your being arrested for another crime; right? You don't recall being arrested for another crime? How about if you take a look when the judge gave you probation, if you look down at 1990 and it says 6/26/1990?

A Uh-huh.

Q That's when he gave you probation. Do you see any crime that you committed after that date?

A No, sir.

Q So you were put on probation, but you actually didn't commit a crime on probation; right? It was the crime for the earlier case; correct?

A Right.

Q And these things just moved in a different order; right?

A Right.

Q So it's sort of weird that your second crime got to sentencing before the first crime; correct?

A Right.

Q You already explained to Mr. Johnson that you wanted the burglary set aside. At some point you spoke to, you mentioned, an attorney named Robbie Rees; correct?

A Yes.

Q And you wanted to amend the sentence; correct?

A Yes.

Q Did you have any direct conversations with Judge Porteous about it?

A No, sir.

Q Now, let me ask you something about the bonds discussion that you had with Mr. Johnson. You said that

you had accompanied Louis Marcotte when you went to see judges about bonds; correct?

A Yes, I do.

Q And that was with various judges, including Judge Porteous; correct?

A Right.

Q Now, if I could just focus on when you went to Judge Porteous's chambers. Did you ever know him to turn down a bond as well as grant one?

A On some occasion, he would.

Q Why do you think -- do you have any recollection of why he would turn down a bond, give us an idea of the reasons?

A Depending on the nature. If it's a child molestation, a rape, I mean some cases like that, most judges would not want to be a part of that person, letting that person out of jail. Those are the types of bonds most judges would not want to fix.

They only had several judges that would have some judicial understanding that they were entitled to bonds, regardless of what the charge may be, and he was more of a judge that stood out so far when it came down to if he believed you were entitled to a bond, he took that into consideration.

Q So sometimes he would turn down bonds, but at

least he would listen to you in terms of why a bond was justified?

A He was a very fair and impartial judge.

Q I believe you mentioned he had a reputation for being one of the more experienced judges when it came to criminal cases; correct?

A Yes, sir.

Q Do you think it had something to do with his listening, even if the case was a violent crime, as to what the basis would be?

A Yes, he sort of was more -- would give you an opportunity to see the facts, and that's what he was about, more fact-finding than anything.

Q Thank you, Reverend. I'm going to return to that in a second. I wanted to just confirm a couple of things for the record. You never actually made payments for any of the repairs for Judge Porteous; correct?

A No, sir.

Q Okay. And in terms of how they were paid for, do you have a very clear recollection of exactly how they were paid for, all of these repairs?

A Well, they were paid most of them, on most occasion with a credit card.

Q But were you --

A On some occasion, I would receive cash, \$100

from the office. If I brought the car to a detailing area, I would pay for it with cash, but I would get a receipt.

Q Now, you didn't personally know if Judge Porteous ever reimbursed for that, right, because you weren't there; right?

A No, sir. I didn't have that type of interaction.

Q Now, isn't it true that the cleaning and gassing up of these cars you mentioned was only roughly a six-month period?

A Six to eight months probably.

Q By the way, I wanted to confirm. At an earlier stage, did you tell the FBI that you thought it was one day of repairing that fence at his house?

A All I can recall, we spent two days to three days there.

Q Wasn't part of that time, didn't you and Mr. Duhon wait for the concrete to dry for 12 hours because it needed to dry?

A I think that's possible.

Q Now, do you have a good recollection of when you repaired this fence, the date?

A No, sir.

Q Now, you were incarcerated between February 1991 and August 1993. Do you remember if it was before or after

your incarceration, or you just don't remember?

A I can't remember.

Q If you don't remember, that's fine. Okay. But you do remember that this occurred when he was a state judge?

A Yes, sir.

Q And you've never done any repairs of any kind for the judge when he was a federal judge?

A No, sir.

Q And you never did any repairs inside their house; correct?

A No, sir.

Q You mentioned that Louis Marcotte would often deliver things of value to the courthouse. Wasn't it a regular practice for Bail Bonds Unlimited to give gifts to a lot of judges?

A Yes, it was, not just Judge Porteous but several judges.

Q So would you often deliver those things like shrimp, for example, or cakes?

A I would bring doberges, they call it. They had a bakery, and what I would do, I would bring little boxes of the little pastries to each division of the judges. Most of the secretaries would receive it, but there were several judges that would not allow you to bring it.

Q Now, on occasion, you would go to lunch with the Marcottes and Judge Porteous; correct?

A Yes, sir.

Q But didn't you state earlier you also would go to lunch with other judges, like Judge McCabe, Chehardy, et cetera?

A Well, one of the things, Louis as my protege, I would go to the courthouse and park the car to the side entrance of the courthouse, and we would summit some of the judges for lunch. I would go in and let them know blah, blah, blah, they're going to have lunch here. Those that didn't have a ride, I would ride to the area, to whatever designated place they was eating at, and would bring them back.

Q Thank you, Reverend. Now, I want to clear up one thing, by the way, because you mentioned it, and I wanted to make sure we understood it clearly in the record. You mentioned that you would need a pardon for that drug offense on top; correct?

A Yes, sir.

Q So the only way you could actually clear your record was to go and get a pardon from the governor; correct?

A Yes, sir.

Q So all that the expungement did on the burglary

was to allow you to try to do that, right, so that once that was removed you had the opportunity to try to get it from the governor; correct?

A Well, it gave me the opportunity to proceed to the next level.

Q Okay. I want to go back. You said you viewed Judge Porteous as a compassionate judge. Can you tell me why?

A Well, in the parish that I reside in, most of the crime that was being committed at that time, and still is probably, when you have poor, indigent, some of the black that go to jail in that parish, bonds are set high significantly. And there were not too many judges that were favorable with some of these people. And Judge Porteous was a very favorable judge. He was viewed by a lot of our people as a very sympathetic-type person that you can -- you had a fair chance with, you know. You had a chance.

Q And when you said some bonds were set too high, was he a judge that would listen if you came and said this was artificially high and would reduce the bond for that person?

A The bonds, as you know, lawyers know, that bonds are set according to your background, your criminal history and everything. Judge Porteous would take all those facts

in, but he would look more or less for the violent in your life and if there was some area of violence that he considered could be a threat to the community, and he probably wouldn't do it. But if it was someone that made mistakes the first time, he was more reluctant to work with them.

Q So as long as you weren't a violent felon, he tended to be a judge that would give people a second chance?

A Yes.

Q He would often to look to see if there was a violent crime in the record to make that determination?

A Yes, sir.

Q And in your case, you're now a productive member of society; correct?

A Yes, sir.

Q And as a reverend, do you sometimes work with former felons?

A Still do.

Q And in your experience with Judge Porteous, did he sometimes talk to you about how you were doing?

A Not really. He would just see me and -- we didn't really have a dialogue too much of a conversation, but you could see the sense of pride, you know, that you're doing something encouraging to a large extent.

Q Did a lot of judges do that for you?

A Yes. Thank God I'm fortunate that I made my mistakes in life, but for the most part I've been involved more actively in the community with a lot of stuff. So I work with a lot of judges now, interact with a lot of people from law enforcement. Thank God I had the opportunity for a chance.

Q And that opportunity came, in part, because you had an expungement of your record, at least from Judge Porteous?

A Well, it was a process.

MR. TURLEY: Thank you, Reverend Wallace. I appreciate it.

CHAIRMAN MC CASKILL: Any other questions?

MR. JOHNSON: Yes.

CHAIRMAN MC CASKILL: We haven't had a break since we came back. How long do you think you will be?

MR. JOHNSON: Very short.

CHAIRMAN MC CASKILL: I would ask all of the members that are here, when we break, we would like to have an informal meeting, just some housekeeping matters, in the back conference room before you take off to your offices. So if you would gather back there just for a minute. Thank you.

Congressman?

MR. JOHNSON: Thank you.

REDIRECT EXAMINATION

BY MR. JOHNSON:

Q Mr. Wallace, you have been shown a chart here that has been explained as being somewhat complicated. Mr. Wallace, you may not be able to see the screen, but I will ask you, you were arrested for the drug case on the 15th of 1988; is that correct?

A Yes, sir.

Q The 15th of December 1998 -- or excuse me, 1988. And the next thing to happen as far as you being arrested was in February of '91 -- excuse me, was May of '89 when you were arrested for the burglary case?

A Yes, sir.

Q And you were already out on bond for the drug case at that time?

A Yes, sir.

Q And then the first case that actually came to court was the burglary charge?

A That's right.

Q Which was the second arrest?

A Right.

Q That case was adjudicated first?

A Right.

Q It resulted in a guilty plea, and you got three

years' probation; is that correct?

A Yes, sir.

Q But then you were unable to complete your probation because in February of '91, after you had been sentenced on the burglary case, you pleaded guilty to the felony drug case and got jail time for that, five years; correct?

A Yes.

Q And it was thereafter, since you went to jail, you were not able to complete your probation; correct?

A Yes, sir.

Q And that's why your probation was terminated in December of '91, because you could not -- you were already in prison on the drug case and you could not complete the burglary probation; is that correct?

A Yes, sir.

Q Isn't it true that in order to get the pardon on the drug charge, that the drug charge had to be your first offense, not your first conviction?

A I don't understand what you mean.

Q The drug offense was your first offense, was it not?

A Yes, sir.

Q It was your second conviction, however?

A Right.

Q So you would have had to get the burglary charge set aside so that then you would have only one offense, which would be your first offense --

A Yes, sir.

Q -- to get the pardon for?

A Yes, sir.

Q And you could get a pardon for your first offense but not for your second; right?

A Right.

Q Was that your understanding?

A That's my understanding.

Q So Judge Porteous actually put you in a position to where you would have a chance of receiving a pardon on your first offense, the drug case?

A Yes, sir.

Q Now, you never asked Judge Porteous to do that for you either personally or by way of a attorney?

A No, sir.

Q Is that correct?

A Yes, sir.

Q Did Judge Porteous do that because he owed you something?

A No.

Q Would it have occurred because, perhaps, he did it for Louis Marcotte?

MR. TURLEY: I'm sorry. I object. He's asking for speculation on the motivations of Judge Porteous, something he would not know about.

CHAIRMAN MC CASKILL: Sustained.

BY MR. JOHNSON:

Q Do you know whether the set-aside of your burglary case by Judge Porteous was at the request of Louis Marcotte?

A Yes.

MR. JOHNSON: I have no further questions, your Honor.

CHAIRMAN MC CASKILL: Any other questions?

MR. TURLEY: No, Madam Chair.

CHAIRMAN MC CASKILL: Any questions by the panel?

MR. SCHIFF: Madam Chair, I have a question. I want to make sure that exhibit was not admitted into evidence, because we have an objection to an inaccuracy on the exhibit.

CHAIRMAN MC CASKILL: It was not moved into evidence.

MR. SCHIFF: Thank you.

CHAIRMAN MC CASKILL: We're going to adjourn now until about 10 after, and then we will plan on staying until 7:30.

(Recess.)

CHAIRMAN MC CASKILL: The House has 13 hours and 14 minutes remaining, and Judge Porteous has 14 hours and 8 minutes remaining.

We had a brief housekeeping matter in the back. So I can convey to you to you what we worked on, and that is trying to be really diligent about keeping track of when Senators can be here and when they cannot, so that we don't have situations where everyone is sitting around waiting as we had today. I think everyone has a renewed commitment to be working with their schedulers and with the committee to make sure that when we tell you we're going to be here, we will be here, and we will be working. It's really important that we manage our time appropriately and so that we are not inconveniencing you and being rude to you.

At the same time, I want to emphasize to you that we hope you're managing your time, because we will not be persuaded at the end of this process if, in fact, you believe there's witnesses that will need to be called. We ask you and continue to urge you to be mindful of your time management and the witnesses that you want to call and the time you want to take so that we don't get into something that would be a problem at the end of this process. It does appear that we think we do have enough members to continue until 7:30. So we're going to press on tonight.

It does not appear that we have enough members to begin at 8:00.

So in the morning, we will begin at 8:30, is what time we will begin. We have a number of members who have commitments or functions in the morning, and we have the Senate breakfast on Wednesday morning, one member who is a speaker and one member who is the chairman of the group. We're going to try to accommodate the group and begin at 8:30.

Okay. I think we're ready to go with the House's next witness.

MR. SCHIFF: The House calls Rafael Goyeneche. Whereupon,

RAFAEL GOYENECHÉ

was called as a witness and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DUBESTER:

Q Please introduce yourself to the members of the Senate panel.

A My name is Rafael Goyeneche, with the Metropolitan Crime Commission for New Orleans.

Q I'm going to get to what the Metropolitan Crime Commission is in a minute, but let me just ask you some background questions first.

Please describe where you grew up and your educational background.

A I grew up in the City of New Orleans, attended LSU undergraduate school, and graduated with a JD from Loyola of the south law school.

Q When did you graduate from law school?

A 1980.

Q What was your career path upon graduating from law school?

A I began as an assistant district attorney in Orleans Parish from 1980 until the beginning of 1986.

Q What sort of cases, if any, did you specialize in as a prosecutor?

A Primarily white collar, but when you work in the district attorney's office, you work in a variety of different areas. But the portion that I spent the longest time in any one particular division was the economic crime unit, which is a white collar prosecutorial unit.

Q In the course of your duties with the district attorney's office, did you have occasion to go in and out of courtrooms and handle trials, handle all the matters associated with a criminal caseload.

A Yes.

Q Did there come a time when you left the prosecutor's office?

A Yes. I left the district attorney's office in 1986 to join the Metropolitan Crime Commission.

Q What was your first position at the Metropolitan Crime Commission?

A I was a special assistant to the then-managing director handling a research project.

Q Did there come a time when your role in the Metropolitan Crime Commission grew?

A Right. In 1989, after the gentleman that hired me retired, I was promoted to the presidency.

Q Are you still the president?

A Yes, I am.

Q Now is your opportunity to tell the Senate, what does the MCC do? What is the MCC?

A The Metropolitan Crime Commission is a 58-year-old citizen's group that was created in 1952 by the business community in recognition that crime and corruption are disincentives to growth. In Louisiana in general, in New Orleans in particular, it is a very daunting challenge to report wrongdoing. The crime commission as a citizen's organization encourages the public to report instances of ethical, administrative, and criminal wrongdoing. We develop the information, to the extent that we can as private citizens, and then we make referrals to appropriate agencies.

The business community recognized that people that report wrongdoing really, in many instances, have a disincentive to report it through the normal governmental bodies, and they thought it would be -- it would facilitate the flow of more information that could be used to clean up some of the problems dealing with ethical, administrative, and criminal wrongdoing.

Q Now, in late 1994, did you have occasion to receive an allegation that related to then-state Judge Porteous?

A Yes, we did.

Q And who brought that allegation to your attention?

A The information was brought to the crime commission initially by an assistant district attorney in Jefferson Parish, Mike Reynolds.

Q And if I may lead just so we can move on a little bit, was the gist of the allegation that Judge Porteous had unlawfully set aside a conviction of a Louis Marcotte employee, Aubrey Wallace?

A Yes.

Q And when you received this allegation --

MR. TURLEY: I'm sorry to interrupt, sir.

Madam Chair, I want to point out, we have not made objections on hearsay grounds. We've been trying to

keep our objections to a minimum, given the nature of these proceedings. My understanding is that Mr. Reynolds is scheduled to testify next, and I would simply raise with the Court whether we should introduce hearsay as to what he said when he's going to be appearing next as opposed to getting it from the witness himself.

MR. SCHIFF: Madam Chair, in order to accommodate our witnesses and making sure we stay on track in terms of our time, at this point it is our intention to not call redundant witnesses, including Mr. Reynolds. We're not offering it for the truth of the matter. We are offering it to show the action that this gentleman took as a result of getting the information.

MR. TURLEY: Madam Chair, if we could make one more note. What the House Managers are saying is that they're going to have this witness give us the account of what Mr. Reynolds said and then dismiss Reynolds as opposed to asking Mr. Reynolds what he said.

CHAIRMAN MC CASKILL: If they are asking him not for the truth of the matter asserted but, rather, as a way of explaining the actions that this witness took, I'm going to allow the question. But that does not mean they've put into evidence that that is, in fact, what the witness said.

Now, they may want to offer a stipulation that that's what the witnesses said. I certainly would

encourage any of you who have redundant witnesses to work on additional stipulations. There is certainly some economy that could be realized if you know a witness is going to take the stand and say I said A, B, and C, or I said A, and you have another witness saying he acted on that, it seems to me that would be a logical place for the two of you to agree and stipulate that for the record.

I'm not telling you what to do with your time. I'm saying that is one way you could get some real economy in terms of repetition of the same sets of facts over and over again. So the question will be allowed under the understanding that it's not being offered for the truth of the matter asserted in the question.

MR. SCHIFF: Thank you, Madam Chair.

BY MR. DUBESTER:

Q So going back to that last question, did you receive the allegation that I just described?

A Yes.

Q Okay: What did you do after you received that allegation?

A After we received the allegation, we attempted to secure some documents that would corroborate the information that was represented or presented to us by Mr. Reynolds.

Q And what sort of documents did you try to get a

hold of and actually get a hold of?

A We obtained copies of the proceedings involving Aubrey Wallace's initial guilty plea with respect to the burglary charges from 1989 in Jefferson Parish. We then obtained copies of the minute entries and transcripts from the hearings that were conducted in '94 in which Judge Porteous amended the sentence of Aubrey Wallace.

Q Did you get any records related to the underlying cases of judge -- sorry, of Mr. Wallace as well?

A Yes. We researched Mr. Wallace's criminal record with respect to charges that had been brought against him in the Jefferson Parish system, arrests by the sheriff's office for narcotics violations and for the burglary, and we obtained the accompanying docket masters and bills of information and records from the court with respect to his drug charges as well.

Q Now, as a former prosecutor, were you just basically familiar with the principles of law which were at play in the set-aside --

A It was really some very basic fundamental legal principles dealing with guilty pleas in felony cases. So you had Louisiana Code of Criminal Procedure Article 893, which deals with probated sentence in felony cases.

Q You're way ahead of me. I'm just asking if you're familiar with the legal principles.

A Yes.

Q Are these principles that you dealt with on a day in, day out basis as a prosecutor?

A Yes.

Q And when you heard the allegation, did these principles resonate to you as something which suggested that you should take the investigative steps that you took?

A Right. It was very unusual based on my experience, as well as the -- from the experience of the person that brought that information as well.

MR. TURLEY: Madam Chair, I have to raise an objection. My understanding is this person is not being called as an expert witness on the meaning of 893 or the customs with regard to whether things are granted or not granted under 893. He's been called as a fact witness.

CHAIRMAN MC CASKILL: You are certainly free to try to establish this witness as an expert if you're going to have him testify about something that requires expert testimony, but you would need to establish that foundation.

MR. TURLEY: Madam Chair, we were asked to designate all experts who were going to testify in this case, and we were given a hard date to do that. We would object to the addition of another expert.

CHAIRMAN MC CASKILL: Like I say, if you want to establish -- I think there's certainly -- I honestly

believe, Mr. Turley, there's certainly been enough notice about what this witness would testify to, and this would not be beyond the purview of his testimony.

MR. TURLEY: I can represent to the chair that at no time in the process of this case has anyone suggested this individual would testify as an expert on these questions. In fact, they specified him for 15 minutes. But putting that aside, it was to address what the MCC did. There was never even a hint that they would be asking him about, you know, what the customs are under 1983, and the reason this is even more serious is they just said they weren't going to call Mr. Reynolds. And so we once again have to renew our objection.

SENATOR RISCH: Madam Chairman, does customs require establishment as an expert witness? It's just a factual question from his observations.

SENATOR WHITEHOUSE: And it explains why he pursued what he did. I don't see the expert angle to it at this point.

CHAIRMAN MC CASKILL: I think what you should do is continue to question this witness with the understanding that you need to question him about his observations but not as to his legal opinions as to various statutes or how they are applied. Rephrase your question.

BY MR. DUBESTER:

Q After you received the allegations and based on your experience and based on your sort of initial take on the allegations, in addition to what you've just described doing, did you yourself research the law as well?

A Yes, I did.

Q And -- with the permission of the Senate, I would ask that Mr. Goyeneche be allowed to walk through the applicable article and applicable statutes that are at play, and I will not be asking him to render an expert opinion.

MR. TURLEY: Madam Chair, if I can read to you what we were given as to the scope of his testimony, which I believe is controlling in this regard. The government said "Mr. Goyeneche, president of New Orleans Metropolitan Crime Commission, will testify that he interviewed Judge Porteous while Judge Porteous was a federal judge and that Judge Porteous admitted to going to New Orleans with Louis Marcotte and denied that Louis Marcotte paid for him. Anticipated time, 15 minutes."

That is what we prepared for. What they're trying to do now is not have Reynolds testify and expand on that, and we would suggest that is unfair, and we were given very clear rules and told we would not be able to go outside those rules.

MR. SCHIFF: Madam Chair, we have tried to keep

our objections to a minimum. When Mr. Turley went way beyond the scope of our examination of Lori Marcotte and went into whole new areas, we did not object. If Mr. Turley decides to use his time that way, it is okay with us. We want to ask this witness his understanding of the law and why that caused him to follow up with his investigation. Mr. Turley can take issue with whether he's understood it correctly, he can have his own people testify, he can call Mr. Reynolds, if he wants. It's hard to get from this witness why he took the steps he did without understanding what the law was, why it applied, why he felt concerned about what Judge Porteous did.

CHAIRMAN MC CASKILL: I think this witness can be allowed to testify to whatever steps he took, as it relates to his interaction with Judge Porteous, as it relates to the articles. And so I think that to the extent -- I don't think it's necessary for him to talk about his -- I think he can testify about what he did and the questions he asked. I don't think -- that doesn't get into any expert testimony, and I think it falls loosely within the notice that you've given the other side.

So you may proceed with your questioning with that understanding.

MR. DUBESTER: Thank you very much.

BY MR. DUBESTER:

Q I'd like to now proceed. Roughly when was it that Mr. Reynolds came to you with the allegations that we have just discussed?

A In early October of 1994.

Q And did you have more than one conversation with him throughout October of 1994?

A Yes.

Q And as a result of those conversations, did you ultimately ever go to interview Judge Porteous?

A Yes, we did.

Q And where was it that you went to interview Judge Porteous?

A In the federal courthouse in New Orleans on Camp Street.

Q Who did you go with?

A I went with my vice president, Mr. Anthony Radosti.

Q And what do you recall about the physical setting of where you were when you interviewed Judge Porteous?

A I remember that the judge was just in the process of moving into his chambers. There were still boxes that he was in the process of unpacking, and his staff was getting situated.

Q Now, in preparation for your testimony today,

have you -- strike that.

After you interviewed him, did you do a write-up of some sort of the contents of that interview?

A Yes, I did.

Q Have you read that interview in preparation for your testimony today?

A Yes, I did.

Q Does that refresh your memory about the contents of that interview?

A Yes, it did.

Q Putting aside how your memory has been refreshed, is there anything in particular that you remember about that interview as of today, and --

A I think what was most striking about that interview that I would recall six months ago before I ever heard from you or six years from now is that we went in to explain to the judge what the purpose of our meeting was, to question him about the amended sentence for Aubrey Wallace, and he began by saying well, you're the guys that think I'm dirty, let's not sugarcoat anything.

Q Now, after did you your interview with Mr. Radosti, did you or Mr. Radosti prepare a memorandum or a write-up of that interview?

A Mr. Radosti would have prepared the memorandum, and I would have reviewed it and edited it.

Q When in relationship to that interview was that write-up actually prepared?

A Within a 24-hour period of time.

Q Who worked on that write-up?

A Mr. Radosti would have prepared it, and I would have, as I said, edited it.

Q In preparation for your testimony today, have you reviewed that document?

A Yes.

Q And do you recognize some of your own language or some of the --

A There's some phrasing in there that would be something I would do. Additionally, some of the other references to the codal articles would also be something that I would have probably phrased.

MR. DUBESTER: Your Honors or Senators, I would like to move into evidence Government's -- sorry, House Exhibit 69D, Bates numbers PRT 594 to 597. I'd like to show it to the witness first and have him identify it, but it would be my intention to admit it at that time.

MR. TURLEY: No objection.

CHAIRMAN MC CASKILL: So admitted.

(House Exhibit 69D received.)

MR. TURLEY: Once again, that's like a 300-page document. We're just agreeing to these pages that they're

introducing here.

CHAIRMAN MC CASKILL: Understood.

MR. DUBESTER: I believe we need IT to put the document up.

CHAIRMAN MC CASKILL: Okay. IT?

BY MR. DUBESTER:

Q Mr. Goyeneche, do you recognize the front page of this document?

A Yes, I do.

Q How is it that you recognize that?

A It is the document that was prepared. We entitled it "intelligence report," dated November the 9th, 1994.

Q And I think I've asked this a hundred different ways, but does this document fairly and accurately record what happened at that interview?

A Yes, it does.

Q I want to ask a couple of questions about what Judge Porteous said and what you asked.

First, did Judge Porteous -- did you ask Judge Porteous any questions as to whether or not Louis Marcotte in any way was behind the set-aside?

A Yes, we did.

Q And what was Judge Porteous's answer?

A The judge adamantly denied that he amended

Mr. Wallace's conviction out of friendship for Mr. Marcotte, and he was adamant that he didn't do it out of friendship.

Q Going now to the bottom of page 2 and on to page 3 of this document, did you ever ask Judge Porteous questions to illuminate Judge Porteous's relationship with Louis Marcotte?

A Yes.

Q That's a yes-or-no question.

A Yes.

Q Did you write down exactly as you recalled it soon after that interview what Judge Porteous said in response to those questions?

A Yes, we did.

Q Would you start reading from the bottom of page 2, the paragraph that begins with "the judge freely admitted."

A Okay. "The judge freely admitted that he has known Mr. Marcotte for a number of years and considers him to be a friend. We asked the judge if he frequently ate lunch with Mr. Marcotte and provided him with the name of two restaurants they frequent. He admitted that he had several lunches with Mr. Marcotte, but he didn't know if he would term his lunches with Mr. Marcotte as 'frequent.'

"Additionally, we asked if he had traveled to

Las Vegas with Mr. Marcotte, and he confirmed that he had. The judge stated that six or seven people went as a group to Vegas and Marcotte was a member of the group. The judge, when asked did Marcotte pay his way, he quickly changed the subject. Porteous when asked again a second time advised that Marcotte did not pay his way to Vegas."

Q The fact that you wrote about Judge Porteous's two different statements about Las Vegas, were those statements significant to you?

A Yes, they were. Everything that we asked the judge was prepared in advance based upon the research and witnesses that we had interviews prior to that meeting.

Q Okay. Did you have a specific legal issue that you raised with Judge Porteous concerning his set-aside of Mr. Wallace's conviction?

A Yes. I questioned him about the way that he imposed Article 881, Code of Criminal Procedure Article 881 in amending the sentence of Mr. Wallace.

Q Okay. And when you were talking about Article 881, did you have an understanding of the contents of Article 881?

A Yes, I did.

Q And did Judge Porteous appear to you, in response to your questions about Article 881, appear to have an understanding of the contents of 881?

A Yes, he did.

Q Okay. With that -- and what provision of law does Article 881 refer to?

A It refers to amending of a sentence.

Q And does it set forth time limits which relate to when sentences may be amended?

A Right. It basically says that a sentence --

Q I'm not --

A Yes.

Q Try to stay with me and answer the question, sir. I'd like to show on the screen now the following document, Exhibit 69D, PORT 0672. Just listen to the question. Do you recognize what's in front of you?

A If it's blown up, I probably can. That's better. Yes.

Q And what is that that you read in front of you?

A It's the Code of Criminal Procedure Article 881.

Q And is this the Code of Criminal Procedure about which you were asking Judge Porteous?

A Yes, it is.

Q And what does this Code of Criminal Procedure relate to generally, without describing its contents?

A It relates to under what circumstances a court can amend a defendant's sentence.

Q And what understanding -- I'd like to move this

page of 69D into evidence.

MR. DUBESTER: It's PORT 0672, Exhibit 69D.

CHAIRMAN MC CASKILL: The panel will take notice of the sentencing statutes of the state of Louisiana.

BY MR. DUBESTER:

Q I would ask you to just read out loud Article 881, the first paragraph A.

A Okay. "Although the sentence imposed is legal in every respect, the Court may amend or" charge "the sentence, within the legal limits of its discretion, prior to the beginning of execution of the sentence."

Q I believe you used the word "charge." Could that word possibly be "change"?

A Change, I apologize, yes.

Q Okay. And what was your understanding of what this meant at the time you spoke and asked questions of Judge Porteous on this statute?

MR. TURLEY: Same objection, Madam Chair. That is an expert opinion that is being requested.

CHAIRMAN MC CASKILL: Overruled.

THE WITNESS: The context of my inquiry with the judge is that this codal article is very basic and very clear in saying that a sentence cannot be amended prior to -- or subsequent to someone commencing their sentence. And in the case that we researched with Mr. Wallace that

the judge -- we discussed a little earlier on in our memorandum, it was clear to us, it was the opinion of the crime commission that Article 881 was not followed by the judge. So we asked the judge --

BY MR. DUBESTER:

Q The question was, what was your understanding of this provision. So let me move on. So was it your understanding, as you asked Judge Porteous about this provision, that a sentence may be amended, as this states, only prior to the beginning of the execution of the sentence?

A That's what the statute says.

Q Now, as far as Mr. Wallace was concerned, do the records show that Judge Porteous amended that sentence prior to the beginning of the execution of sentence or some time after that?

A It was some time after that.

Q In fact, based on your review of the records, did Judge Porteous amend Mr. Wallace's sentence, not only after the execution of the sentence had commenced but after it had actually already been completed?

A Absolutely.

Q So is that why you brought these concerns to your interview of Judge Porteous?

A Yes.

Q And when you asked Judge Porteous about this provision, would you read out loud exactly what Judge Porteous said. I'd like to now start at the top of page 4 of PORT 597. I'm sorry. That's the prior exhibit. Yes. Would you start reading out loud with the phrase "we informed."

A "We informed the judge in our opinion his actions were improper under Louisiana Code of Criminal Procedure Article 881, re amendment of sentence. We pointed out that the article limits the courts discretion to amend sentences to instances prior to the beginning of the execution of the sentence. Wallace's sentence was amended after completion of his jail term for a narcotics conviction and while he was on supervised parole. The judge admitted that his actions were contrary to Article 881 but defended his actions by stating that the assistant district attorney who was present in the Court should have objected to the amendment of Wallace's sentence."

Q Okay. You go on there to discuss -- to relate what Judge Porteous replied regarding the suggestion that he amended the sentence out of friendship for Mr. Marcotte; is that correct?

A That's right.

Q Overall, how long was this interview?

A It was about 35 minutes.

Q And on the very first page, did you indicate that you get there at 3:25 p.m.?

A Yes.

Q And at the last page, the one that we just had on the screen, do you indicate --

A When we terminated it?

Q Yes.

A It was about 4:00 p.m.

Q And when you left that interview with Judge Porteous, did he say anything which you then put down in your memorandum of that interview?

A Right. He said -- he basically said do what you all think you have to do.

Q Did you write that statement down?

A Yes, I did.

Q This is on page 4, the very last page.

A Okay. "The judge stated that he felt he had done nothing criminal but stated that the assistant district attorney had the authority to appeal his ruling if it was improper. The judge ended the meeting by telling us to do what you think you have to do. We thanked him for his time and we left his chambers at approximately 4:00 p.m."

Q If you had in the past received a complaint about a state judge, could you have taken it to the state

ethics commission or something like that?

A We could have brought it to the Louisiana judiciary commission.

Q Was that an option for you regarding your concerns with this act of misconduct by Judge Porteous?

A No, sir, it wasn't, because Judge Porteous had been basically elevated to the federal bench, and the Louisiana judiciary commission had no authority to sanction the judge for what he did.

MR. DUBESTER: Thank you, Mr. Goyeneche. We have no further questions.

CHAIRMAN MC CASKILL: Mr. Turley?

CROSS-EXAMINATION

BY MR. MEITL:

Q Good afternoon, Mr. Goyeneche. My name is P.J. Meitl. I'm one of the attorneys for Judge Porteous.

You're the president of the MCC; is that correct?

A Yes, I am.

Q Who is the vice president?

A Mr. Anthony Radosti.

Q I've spoken to Mr. Radosti. Do you consider him to be a trustworthy employee?

A Yes, I do.

Q Do you consider him to be honest?

A Yes, I do.

Q Have you ever known him to lie or to submit false information?

A No.

Q Now, the MCC, is it a privately funded nongovernmental organization?

A Yes, it is.

Q Does the MCC have subpoena power?

A No, we don't.

Q Does it have the ability to force citizens or state officials to speak to it?

A No.

Q As a part of your duties as president of the MCC, do you sometimes make statements to the press?

A Yes, we do.

Q Do you ever leak information to the press without attributing the source as the MCC?

A Maybe occasionally I have in the past. I can't recall off the top of my head, but maybe.

Q Okay. I'd like to now introduce Porteous Exhibit 1033, which is a Times-Picayune article dated June 25th, 2006, titled "Embattled Judge Thomas Porteous known for wit, charm." It should be on your screen there, sir.

Have you read this article before?

A I can't recall.

Q Okay. Feel free to take a minute if you want to look through it.

A Could you blow it up for me, please?

Q Sure.

A I still can't read it. I'm sorry.

Q I can direct your attention to the part of the story where you're quoted, which is towards the end of the article.

A Okay.

Q Which is on page 5, Bates labeled DEF 01151. Do you remember being interviewed for this article?

A No, I don't.

Q Okay. As I said, towards the end of the article, there's a discussion of and you Mr. Radosti's meeting with the judge that you just discussed with Mr. Dubester. It states "a few weeks later, Goyeneche nonetheless requested a meeting with the newest federal judge. Goyeneche and Commission Vice President Anthony Radosti entered Porteous's chambers at the scheduled time but didn't have a chance to sit down before the conversation was over."

Do you see that?

A Yes, I do.

Q Do you remember telling the reporters that you

had entered at the scheduled time but didn't have a chance to sit down before the conversation was over?

A No, I don't recall saying that. But when was that article written?

Q The article was dated June 25th, 2006.

A Okay.

Q Now, it then states that "Porteous said I don't have to explain anything to you. I'm a federal judge."

Do you see that?

A Uh-huh.

Q Do you remember telling the reporters that Judge Porteous stated "I don't have to explain anything to you, I'm a federal judge"?

A I think I do. I think I do.

Q Okay. Now, previously, you discussed your interview with Mr. Dubester that you had with Mr. Porteous in 1994. I'm going to put up Exhibit 85, which has been put up several times, but this is a less redacted version.

You've seen Exhibit 85 before today, haven't you?

A This is the November 9th memo that I was just questioned about. Yes, I have.

Q And you reviewed this before coming here today?

A Yes.

Q Did Mr. Radosti draft the notes of this

interview?

A Yes.

Q That's indicated by the "prepared by" on the first page; correct?

A This memo on this page, yes.

Q Now, on the first page -- and you discussed this with Mr. Dubester. It says you arrived at 3:35, and then on the last page, it states that you left at 4:00 p.m.

A Right.

Q Do you recall that?

A Yes.

Q So it appears that, based on you and Mr. Radosti's notes, you were there for 35 minutes?

A That's correct.

Q And during this time you discussed a number of topics, including the Wallace set-aside, lunch with the Marcottes, various state statutes, all these things; correct?

A That's correct.

Q But in your statements to the press you stated you didn't even have a chance to sit down?

A Right. And my explanation would be that in 2006, when this article was written, what is often the case, I may be called sometimes by the media and asked about a matter. I did not go back into the file and review

the memorandum that I was just questioned about. So that would have been my memory from 1994 when we interviewed the judge, and that was my recollection without looking at my notes.

Q All right. At the end on page 4 of this report it says "the judge ended the meeting by telling us do what you think you have to do"; right?

A That's right.

Q Isn't it correct that Judge Porteous never stated, as you put in the press, "I don't have to explain anything to you, I'm a federal judge"?

A Apparently, based on our memorandum, yes, he didn't say that. That was my recollection looking back at it from 2006.

Q But it's not in your detailed four-page report, is it?

A No, it is not. So I was incorrect with what was said in the newspaper.

Q Okay. So your notes would have been the more contemporaneous and more accurate statements, wouldn't they?

A That's correct.

Q So you just made inaccurate statements to the press about Judge Porteous?

A Not intentionally, but yes.

Q Okay. Isn't it correct that during your interview you asked Judge Porteous whether he had lunch with Louis Marcotte and that he openly admitted not only that he had several lunches with the Marcottes, but that he considered Louis Marcotte to be a friend?

A Yes.

Q In fact, Mr. Radosti even added in his typing, and maybe that's your word, as you said you reviewed this, that the judge freely admitted it; isn't that correct?

A Yes.

Q So Judge Porteous wasn't hiding his relationship with the Marcottes?

A No.

Q He wasn't hiding the fact that he was having these lunches?

A No.

Q Now, Mr. Dubester asked you about certain questions you put to Judge Porteous about traveling to Las Vegas with Louis Marcotte; isn't that correct?

A I'm sorry. Repeat that.

Q Mr. Dubester asked you questions about you asking questions to Judge Porteous about trips to Las Vegas?

A Right.

Q During your interview with Judge Porteous, did

you make it clear which trip you were referring to?

A No. I wasn't sure how many trips he had taken, and the reason I questioned him about Las Vegas is because some of the individuals that we had interviewed prior to going to see the judge had indicated that he had been on a trip to Las Vegas with Louis Marcotte.

Q Are you aware that Judge Porteous was, on several occasions, a speaker at a bail bonds convention in Las Vegas?

A No, I was not.

Q Were you aware that Judge Porteous on those occasions had his trip paid for by the bail bonds convention?

A No, I was not. That's why I asked the questions.

Q So you didn't make it clear in your interview or questions of Judge Porteous what you were referring to?

A I made it clear if he went to Las Vegas, if Louis Marcotte paid for his trips to Las Vegas, and his response was no.

Q You didn't state at any time he went to Las Vegas. You asked about a trip to Las Vegas, didn't you?

A Yeah.

Q So Judge Porteous could have been talking

about -- in responding to your questions, he could have been thinking about trips where the bail bonds commission paid for his trip; right?

A The judge could have clarified, I've been to Las Vegas as a part of a bail bonds commission.

Q But you didn't ask the question? Or you could have asked the question?

A If I'd have known, I would have, but I was unaware of that.

Q Now, Mr. Goyeneche, isn't it correct that the MCC uses confidential informants in the course of its investigations?

A Sometimes.

Q Now, these confidential informants, do they often include people in the police department or the district attorney's office?

A Sometimes.

Q In fact, the use of confidential informants like Mr. Reynolds, who you mentioned, was a large factor in you starting the MCC investigation of Judge Porteous, wasn't it?

A Well, I think that the fact that he called and provided very detailed information certainly helped us make a decision to move forward with this investigation, and before we did anything publicly, we obtained copies of the

court records that confirmed what Mr. Reynolds had -- had presented to us.

Q Okay. Would it be fair to say that the MCC relies on the use of confidential informants to perform its work?

A Well, we don't self-initiate any investigations that we undertake. Because we are a private organization and we don't have subpoena power, we're pretty much dependent upon people picking up the phone and reporting wrongdoing to us.

So with that respect, I mean, whether it's a Mike Reynolds as an assistant district attorney, a police officer or a private citizen, you know, it usually starts with a phone call to the Metropolitan Crime Commission.

Q And, in fact, the MCC pays confidential informants, doesn't it?

A It says -- we do from time to time. You can count on one hand over the course of my tenure with the Crime Commission how many times an informant has actually requested to be paid.

Q But on your Web site, for example, it specifically states citizens can provide information in the strictest confidence and may be eligible for rewards; correct?

A That's correct.

Q So an individual who brings you information might think they are doing -- if they bring you information, they might think that they might get a reward out of it; isn't that correct?

A Apparently some people do because some people have asked for it.

Q And on a different part of the Web site, it states that the Metropolitan Crime Commission will pay a reward of up to \$500 for information leading to an arrest, isn't that correct?

A Now, that's for information about street crime. That's related to a different program. That's not our antipublic corruption initiative.

That is a wanted by the law column, where law enforcement submits pictures of wanted subjects. So that is separate and apart from the initiative that you were referring to initially.

Q All right. Well, so how much do you pay confidential informants on public corruption issues?

A I think we have publicly stated we would pay a reward of up to \$100,000.

(6:00 p.m.)

Q How much did the MCC pay Mike Reynolds for his information that he provided to you?

A Zero.

Q Finally, also on your Web site, don't you tell the public that the MCC is a nonprofit -- nonprofit, privately funded citizens organization?

A Yes.

Q Okay. But isn't it correct that the MCC receives considerable federal funding, including half million dollars last year, from federal appropriations?

A We receive a grant. And at the time that information was written, we weren't receiving any federal grants. So, you know, we occasionally do get grants, and it's in support of what we do from an antipublic corruption effort.

I can say in 1994, when all of this was going down, we weren't receiving any federal funding.

Q I'm --

A The funding that we've received from the federal government, I think, began in the 2000s.

Q Okay. But I'm talking about your Web site right now. It says it's a nonprofit, privately funded organization. And yet in 2010 you received half million dollars in federal appropriations.

A You know, when you receive a grant, it's a federal grant. I mean, it's still not, you know -- it's not funding that, you know, we are actively going out and soliciting, something that is provided to us in conformity

with what we've been doing over the past 58 years.

MR. MEITL: All right. Those are all the questions we have for you right now, Mr. Goyeneche.

REDIRECT EXAMINATION

BY MR. DUBESTER:

Q Okay. Mr. Goyeneche, the article speaks for itself, but this article does relate several aspects of the conversation you had with Judge Porteous. And would those be -- if that is the case, would that be inconsistent with the literal representation that you got there and stood up and left?

A I'm sorry. Repeat the question?

Q I'm sorry. If the article relates several aspects of your conversation with Judge Porteous on -- that is the subject of your testimony today, that would, of course, be literally -- that would be inconsistent with the most literal and strict interpretation of your statement that you're quoted in this article as saying, that you got there and left; correct?

A Right.

Q Okay. And in that article, for example, it does mention that when you got there, he said words to the effect of -- well, let me move on. Strike that.

In this article, you did say, did you not, you did tell the reporter or you're quoted as saying "he said

'you're the guys that think I'm dirty,'" and that is a recollection you had in 2006 from your interview in 1994?

A Right. As I said during my direct examination with you, that comment was something that was striking to me that I took out as a memory. And, quite frankly, I would not have been able to recollect all of the facts that were presented in that memorandum, had I not reviewed it. And I did not review it for this interview.

Q Okay. Mr. Meitl has asked you a bunch of questions about what you knew about the trips of Mr. -- of Judge Porteous. Are you aware of whether or not he ever took trips to Las Vegas in connection with bail bonds conventions?

A I was -- this is the first time hearing of that.

Q And I think the parties have stipulated that he took a trip to Las Vegas in 1996 with a bail bonds convention, but your interview with Judge Porteous was in 1994; is that correct?

A That's correct.

Q And on that one, he indicated he went with six or seven people and denied that it was paid for by the Marcottes; correct?

A That's correct.

Q So it was a trip he took with the Marcottes in or about 1994, that's --

A He admitted Louis Marcotte was a member of the group that went with him, and he said that it was not paid for by Mr. Marcotte.

Q And that was -- and there was -- and that was the clear thrust of your question, and that was the clear thrust of his answer; correct?

A Yes, sir.

Q Okay. Now, this whole business about rewards that your company -- or sorry, your organization offers. Did -- are you aware of whether or not Mr. Radosti and Mr. Reynolds knew each other, had a preexisting relationship, prior to Mr. Reynolds coming to the MCC?

A Yes.

Q And do you know where that relationship came from?

A They would have worked together in the New Orleans district attorneys office. Mr. Reynolds was employed or working within the white collar crime unit, the economic crime unit, and Mr. Radosti was an investigator in that unit.

Q And your organization receives a grant from the federal government?

A Yes.

Q And you -- is that a secret that you don't let the world know about?

A No, we publicized it, there have been press releases about it. Just haven't updated our Web site. There's nothing sinister about it.

Q And finally, and let's get -- I think I went a little quickly through this one statement when I was asking you at the outset of your testimony about your inquiry as to the circumstances which led to the set-aside of the Wallace conviction.

And I'd like to go now to page 4 of the document at 597 in the middle.

I believe in your opening testimony, you indicated that the judge vehemently denied that he amended the sentence out of friendship with Mr. Marcotte.

A Or at the request of Mr. Marcotte.

Q I'm sorry. In fact, did he go further than simply saying it wasn't out of friendship?

A Yes. It went further. Represented in that memorandum, is what we memorialized shortly after our interview with the judge.

Q Just read out loud what Judge Porteous told you.

A "The judge vehemently denied that he amended the sentence out of friendship for, at the request of Louis Marcotte."

MR. DUBESTER: Okay. Thank you very much, Mr. Goyeneche.

CHAIRMAN MC CASKILL: Any other questions of this witness?

MR. TURLEY: We have no recross, Madam Chair.

CHAIRMAN MC CASKILL: Any questions from the panel?

SENATOR KAUFMAN: Yes, ma'am.

CHAIRMAN MC CASKILL: Senator Kaufman?

EXAMINATION

BY SENATOR KAUFMAN:

Q I'd like to know if there was nothing you could do about this, as you said, he was a federal judge, why did you go to the interview?

A I'm sorry?

Q You admit there was nothing you could do because he was now a federal judge. Why did you do the interview?

A Well, at the time we weren't aware that he had been con -- when we started this investigation, we weren't aware that he had been confirmed. Now, our interest in this went beyond Judge Porteous. Our interest in this matter included Mr. Marcotte's relationship with judges of the 24th JDC of Jefferson Parish.

In -- there was a story written about this in early 1995 in which this whole matter was publicly disclosed via the newspaper.

The purpose of that story was not so much about

Judge Porteous but to expose the fact that Mr. Marcotte used his relationship with a judge to obtain privileges in the court.

We were receiving information that Mr. Marcotte had basically begun to monopolize the bail bonding system in Jefferson Parish, was writing about 95-plus percent of the \$44 million worth of bail bonds that were being issued in Jefferson Parish.

And that story was devised to try and elicit additional information about Mr. Marcotte in some of his other dealings with judges in Jefferson Parish.

So we were looking at this beyond just an ethics breach or a favor done by Judge Porteous; we were trying to see if we could develop additional information about other instances of corruption involving Mr. Marcotte in the judiciary.

And ultimately, five years later, a federal corruption investigation commenced in 2000, called Operation Wrinkled Robe.

SENATOR KAUFMAN: Thank you.

CHAIRMAN MC CASKILL: Any other questions from the panel? Okay. Thank you.

Just one minute. I want to confer with staff for a minute about scheduling issues.

(Witness excused.)

CHAIRMAN MC CASKILL: We're trying to manage this, and I have vivid recollections of judges telling me that I have to be ready for any witness that's listed at any time.

And so I -- and I'm reluctant to interfere with the order of either side's cases they want to put on, but we've evidently reached an impasse on scheduling witnesses.

It's my understanding the House now wants to call Judge Geyh?

MR. SCHIFF: Professor Geyh.

CHAIRMAN MC CASKILL: And Judge Porteous's team is objecting to the calling of Professor Geyh.

MR. TURLEY: Yes, Madam Chair. Professor Geyh was listed -- we were asked to give the order of our witnesses so each side could prepare, we're shipping boxes back and forth with documents that we're going to be using, trying to get exhibits so they're seamless for the committee.

We were told that Geyh would actually be the last witness. And we haven't raised this objection before. The House has been not informing us in advance of their dropping witnesses, taking them out of order. We have gone ahead, scrambled, dealt with it.

But on this occasion, the witnesses that are still on their list are here, but what they're trying to do

is to say, but we're going to go to the very end, call Geyh, who is going to be the last witness.

CHAIRMAN MC CASKILL: First, was there any representation made to anyone that the order of witnesses that you submitted was binding on you?

MR. TURLEY: We were actually --

MR. SCHIFF: Not in our opinion.

CHAIRMAN MC CASKILL: Let me ask first the House team. Was there any representation by Staff or anyone else that once you submitted a list of witnesses, that you were required to give some kind of notice to the other side as related to the change of order or a decision not to call a witness?

MR. SCHIFF: No, no, Madam Chair.

CHAIRMAN MC CASKILL: Was there any indication given to you by Staff, Mr. Turley, that you had some duty to notify the other side if you decided to change your witnesses or change the order?

MR. TURLEY: We were told to actually inform the committee of changes of the order, because part of this, the purpose of the order, was not just the order of witnesses but the time allocation, which both sides have also been dealing with the schedule.

We were told any changes should be raised with the committee. And we've had a series of these changes.

We haven't tried to stop --

CHAIRMAN MC CASKILL: Mr. Turley, they have the right not to call witnesses, there is nothing here -- I mean, this is their case. They have the right not to call witnesses. I think they have the right to rearrange the order of witnesses.

I think the reason the Staff wanted to know the order of witnesses is because the United States government is footing the tab for all of this. It's footing the tab for airplane tickets and hotel rooms, so we're trying to minimize the cost to the government by not paying for too many hotel rooms if we can keep from it in terms of understanding the order of witnesses.

But we're not going to get that get in the way of how you all want to present your cases.

So I guess what I need to understand is how are you prejudiced by their desire to call a witness now that they were going to call tomorrow?

MR. TURLEY: Madam Chair, I'm just going to have to raise --

MR. SCHIFF: Madam Chair, can I object?

MR. TURLEY: Can I just finish?

CHAIRMAN MC CASKILL: Let Mr. Turley finish.

MR. SCHIFF: Madam Chair, we have votes going on and I'm worried we're going to miss the votes. Can we at

least suspend the argument until we can vote and run back?

CHAIRMAN MC CASKILL: Yes, you may.

MR. SCHIFF: Thank you, Madam Chair.

CHAIRMAN MC CASKILL: How many votes do you have?

MR. SCHIFF: We have only two. I will go there and come straight back.

CHAIRMAN MC CASKILL: And I will ask all Senators not to leave the area.

(Laughter.)

CHAIRMAN MC CASKILL: We're going to post armed guards. I'm going to instruct the Capitol police to not let Senators leave this area, as I know I will not get all the Senators back.

(Laughter.)

(Recess.)

CHAIRMAN MC CASKILL: It's my understanding that Judge Porteous's counsel has a motion on an exhibit that you want to make before we begin? No?

MR. SCHWARTZ: Madam Chair, with regard to the exhibits, previously we discussed moving in House Exhibit 351(1), and we just wanted to clarify we were hoping to move in House Exhibit 351(1) through (56). These are the bond forms that underlie the demonstrative. We'd also like to move in House Exhibit 351(1) through (26), again

additional bond forms underlying the demonstrative.

CHAIRMAN MC CASKILL: Any objection to moving in the underlying bond forms for the demonstrative exhibit Judge Porteous's counsel used?

MR. SCHIFF: No, Madam Chair.

CHAIRMAN MC CASKILL: Those will be accepted into evidence, thank you.

(House Exhibits 351(1) through (56) and House Exhibit 351(1) through (26) received.)

CHAIRMAN MC CASKILL: We're wrestling with scheduling things. Let me say a few things about scheduling things.

We are trying, as I indicated before, to manage the schedule as it relates to witnesses' travel and the expenses surrounding their travel and their lodging.

You all have the right not to call witnesses, and I -- that is your prerogative.

But I do want to give a warning, that if there is any witness listed on the schedule anywhere, you should be prepared to handle that witness. You should not assume just because a witness is listed for Thursday, that you're not going to end up having to direct or cross on Wednesday. Or if it's listed for next Tuesday, I think you should just -- clearly we're not going to fly people in for

Thursday that aren't scheduled to be here until Tuesday or Wednesday.

But I just want you to keep in mind that flexibility is going to be important here, because we're trying to let you put your cases on in the order you want, but we're also trying to weigh that against the public interest of making sure that this is going as expeditiously as possible. So we're going to try to be fair in that regard.

Professor Geyh is the next witness, I understand, that the House wants to call?

MR. SCHIFF: Yes, Madam Chair.

CHAIRMAN MC CASKILL: What we're going to do, since it's 7:00, is we're going to allow you to go ahead and call Professor Geyh but we will only do direct.

That way we can accommodate your need to prepare for cross-examination overnight.

MR. TURLEY: Thank you, Madam Chair.

CHAIRMAN MC CASKILL: And if there are any other questions about the order of witnesses for tomorrow or who is going to be called or who isn't, these folks have planes to catch, there's expenses involved with them not getting a plane that they're scheduled to be on.

I sure hope that you all will make your decisions about your witnesses tomorrow. It's my hope that

you will make that before you leave tonight so that we will have some idea of who you, in fact, are going to end up calling as you finish up your case tomorrow.

MR. SCHIFF: Thank you, Madam Chair. And I would also say, it's our expectation, I hope events don't prove me wrong, that we're going to finish our case tomorrow and maybe earlier in the day than later in the day. Obviously if there's any witness we don't call, defense wants to call, they will be starting their case and they can put them at the top of their list.

CHAIRMAN MC CASKILL: But if you know you're not going to call them, it would be very important for the defense to know as soon as possible, because I think they would want to know to prepare that they have got to do a direct, so forth and so on.

So if you know before you leave tonight that there are witnesses you have listed as your witness and you are not going to call them as a witness, it would be very helpful if you would let Judge Porteous's team know that tonight before you leave.

MR. SCHIFF: Yes, Madam Chair.

CHAIRMAN MC CASKILL: Okay. Professor Geyh.

Professor, if you would stand to take the oath.

Whereupon,

CHARLES GARDNER GEYH

was called as a witness and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BARON:

Q Good afternoon, Professor Geyh. My name is Alan Baron. I'm Special Impeachment Counsel for the House, and I would like to begin by asking you to state your full name for the record, please.

A Charles Gardner Geyh.

Q And, Professor Geyh, are you employed, and by whom and in what capacity?

A I am the John F. Kimberling professor of law and the associate dean for research at the Indiana University Maurer School of Law.

Q Do you have any specific or particular expertise in any areas of the law?

A Yeah, I -- my writing and some teaching interests. But my scholarship focuses in areas of judicial conduct, judicial ethics, judicial administration, judicial independence, judicial accountability, judges and their oversight, essentially.

Q And have you published in this area?

A I have. I've published, by last count, several books and a total of close now to 50 articles, books and book chapters on the subjects that I just listed.

Q Could you give us the titles of some of the books that are relevant to the topic that we're discussing here?

A Sure. In terms of the books that I have published, I'm one of the co-authors of, as far as I know, the only treatise on judicial conduct and ethics out there, which I've got -- won't wave around, but I'm also the author of the forthcoming monograph on federal judicial disqualification that I was commissioned to write for the Federal Judicial Center.

In addition, I have written the reporters notes to the model code of judicial conduct in its recent revision in 2007.

Q Thanks. Have you held any positions relevant to this issue of judicial conduct?

A Sure. I was coreporter to the American Bar Association Commission that revised the model code of judicial conduct in 2007. I have served also for the ABA in the capacity as director and consultant to the ABA judicial disqualification project.

I have previously served as a special counsel to the state House of Representatives in the impeachment of Pennsylvania Supreme Court Justice Rolf Larson, and I was also a consultant to the National Commission on Judicial Discipline and Removal.

MR. BARON: Madam Chair, members of the committee, I believe we've previously submitted Professor Geyh's CV as part of our pretrial statement, and I offer him as an expert on the topic of judicial ethics.

CHAIRMAN MC CASKILL: Any objection?

MR. TURLEY: There is no objection.

CHAIRMAN MC CASKILL: The witness shall be considered, for the record, as an expert in judicial ethics.

BY MR. BARON:

Q Professor Geyh, in anticipation of your testifying, what did you do in terms of preparation?

A I have read the judicial conference report and surrounding testimony. I have read the House report in this case. I have read the depositions of the Marcottes and Amato and Creely in connection with this proceeding. And there may be other documents that I've looked at, but those are the principal ones.

Q I would like first to turn to what I'll call the Liljeberg case and its antecedents. Have you formed an opinion as to Judge Porteous's conduct in light of the relevant ethical standards for judges?

A I have.

Q And what is that opinion?

A I think in each of the four articles, we are

talking about some serious ethical lapses. When it comes to the Liljeberg case, the first two, the Liljeberg case and the Marcottes case, we're talking about a fairly significant amount of information. So it's going to take me a little longer to explain my views on those than the latter two.

But when it comes to Liljeberg, you really need to think about it in terms of four chapters to the episode. And it begins with Judge Porteous accepting free meals and all-expense-paid trips from local lawyers.

Now, I want to be clear that there's nothing wrong with lawyers and judges socializing. It's a normal part of a healthy legal community. And I'm not suggesting otherwise.

It is possible, however -- and to that extent, by the way, buying each other lunch, no problem. Going on vacation occasionally, no problem.

But there is a point where it become -- where, you know, a line can be crossed, where what the judge is, in effect, doing is exceeding the bounds of normal hospitality and is trading on his position as a judge for private gain.

And there is evidence in the record and in the House report to suggest that that's what's been -- what went on here.

In other words, you had a judge being taken not just on occasional lunches where you take friends out and sometimes the judge pays and sometime the lawyers pay, but what are described as countless lunches, at expensive restaurants in which there are four, five and sometimes six rounds of drinks being served, coupled with all-expense-paid trips to Mexico and hunt -- for hunting.

And you have a judge in this context who is reporting to a colleague that once you become a judge, he said, you never have to buy lunch again.

In other words, this is not a judge who is engaging in hospitality in the normal sense, as I understand it. This is a judge who sees an opportunity here and is describing it as such, an opportunity to trade on his status as a judge in order to subsidize his lifestyle.

Now, I don't want to linger too long on this, because there really are other chapters to the episode, and each one I think becomes increasingly more serious and more significant.

The second one, and the one that I think is certainly very, very troubling to me, is when we start talking about cash payments to two particular lawyers, Amato and Creely. And it gets even worse when those cash payments, you know, on demand by Judge Porteous, are

pursuant to a scheme in which Judge Porteous appoints them as curators or appoints and creates curatorships, which entitle the lawyers to fees that they then are asked to give back to Judge Porteous.

This is in the nature of a classic form of corruption, by which I mean a kickback scheme. And it raises any number of serious ethical problems.

For example, it is more or less a universal across the states and federal system that a judge should not lend the prestige of his office to advance the private interests of others, and that includes the judge.

And I think we also have, you know, a separate ethical principle saying all appointment should be made on an impartial basis. And it goes on to say -- the rule goes on to say we should avoid appointments which tend to create suspicion of impropriety.

If in this case we have a judge who was appointing Amato & Creely to curatorships not on the basis of merit but because they are friends who will give him back a portion of the money he has -- you know, that he can then spend, it strikes me as being a per se violation of that important ethical principle.

Q Excuse me. You made reference in your comments to a rule. What rule? Is there any particular rule you're looking at?

A Sure, in this case there is -- we are referring here -- my familiarity with it has to do with the model code of judicial conduct. And the code of conduct in Louisiana during this time frame was modeled after the 1972 ABA model code.

And the rule I'm referring to here is Canon 3(b)(4), all appointments should be made on an impartial basis, says the rule.

And it really embodies a larger principle that I'm really focusing on here, but that's the specific rule.

In addition to this notion of judges, you shouldn't -- you shouldn't lend the prestige of your office to advance your own interests, and that you should make appointments on an impartial basis, judges should respect and comply with the law, is another principle embedded in codes, and that's also -- the point being judges are supposed to apply the law, they had better follow it too.

And when we have a situation involving a kickback, which is illegal, we have a question concerning -- or a serious issue concerning whether the judge is indeed complying with the law.

More broadly -- and this becomes almost a mantra over the course of my testimony -- there is an overarching principle here, which is that a judge should conduct himself at all times in a manner that promotes public

confidence in the integrity and impartiality of the judiciary. That's Canon 2(a) of the code in Louisiana at the time.

It's a principle embedded in the 1972 code, model code, in the 1990 model code and the 2007 model code, each one of which is basically saying you need to behave yourself in a manner that avoids precisely the kind of problem that he's creating by creating this kickback scheme.

The next chapter requires us to fast-forward to the time when Judge Porteous is a federal judge. Thus far, we're talking about activities going on during his tour of duty as a state judge.

We now have the Liljeberg case in place. A lot of money on the line. And at the 11th hour, in comes the very lawyer with respect to whom Judge Porteous was involved all those many years, involving kickback schemes and cash payments and innumerable lunches and so forth.

Opposing counsel is understandably alarmed and moves for disqualification and the judge declines to do so, saying there is nothing wrong with a friend who happens to be a lawyer, I don't need to disqualify myself on that basis.

To evaluate the ethics of this claim, you need to look at really it comes from two different directions.

Title 28 has Section 455, which is really the procedural disqualification rule. And Canon 3 in the code of conduct for the United States judges has the ethical rule involving -- involving disqualification. So it's ethics and procedure, and they both have the same standard, which is has the judge engaged in conduct that a reasonable person might -- might question.

In other words -- in other words, the standard is a judge must disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

In this case it doesn't answer the question to say if you're just a good friend, that's not going to disqualify you, because that's perfectly true, but this Amato was more than a friend. He was a friend with benefits.

He was a friend who was providing kickbacks. He was a friend who was providing innumerable lunches. He was a friend who was providing cash payments.

Now, it also needs to be understood that a lot of judges are out there, they're asked to disqualify themselves and they don't. And sometimes they make mistakes, and that by itself isn't an ethical lapse.

It's only an ethical lapse if they know that they should disqualify and don't. And in this case, there's evidence in the record to suggest that Judge

Porteous knew he should have disqualified himself.

MR. TURLEY: Excuse me, Madam Chair. I have to object. This is becoming less question and answer as much as a lecture. And the witness is giving his account of facts, as opposed to responding to questions as to legal standards.

I just was wondering at what point there was going to be a question to try to present information of an expert as opposed to hearing an argument why the judge is guilty of various factual acts.

CHAIRMAN MC CASKILL: I think that the House is entitled to elicit this information one way or the other. If you want them -- you know, it's up to you to object and ask them to ask more questions, if you want them to do that.

MR. TURLEY: I've just lost track of what question is being asked. I mean, this was about 20 minutes of an account of what the facts in the case are.

CHAIRMAN MC CASKILL: As I say, I think the same information will get elicited after questions. But if you want him to ask the questions, Mr. Baron, ask more questions.

MR. BARON: I'm happy to ask questions.

BY MR. BARON:

Q Professor Geyh, you've recounted the basis --

the factual basis on which you reached your various conclusions concerning the ethical conduct of Judge Porteous.

A Right.

Q Was there anything -- another event in connection with the Liljeberg case which concerned you in that regard?

A Well, I think the point, to me, is that when we're talking about where the disqualification is going to be an ethical lapse, the relevant concern is is it willfully knowing that he has disqualified himself.

In some ways the ethical standards I'm applying have to be applied in a factual context, that's all I'm able to do.

So in this case where he is -- the information suggests the judge is well aware of this kickback scheme and it is -- you know, which to me is clearly information that a reasonable person is aware of that, disqualification follows.

Moreover, there is an indication here of knowledge based upon the evasiveness of the response of Judge Porteous in his disqualification proceeding, where he's asked by -- innocently by the lawyer seeking disqualification, what about the possibility that Amato gave you campaign contributions, and he tells -- he reports

that the only campaign contributions I -- the only money I ever gave him was in my first election.

I mean, there's a negative -- there's an omission there. He'd been getting money from Amato for years over the course of these various kickback schemes. He was well aware of that, and if that were told, it would clearly indicate the need to disqualify.

So that really is -- is what makes, I think, the disqualification matter more than simply a matter of simple error and something more significant.

Q Was there another event in connection with the Liljeberg case, and specifically I'm thinking while the case is under advisement, in which there's an interaction between Mr. Amato and Judge Porteous relative to a fishing trip they were on.

A Yes. I mean, at this point what we see is the case has ended, and -- or the trial is over, and we're waiting for a decision. And at this point, Judge Porteous and Mr. Amato meet, and Judge Porteous asks him for \$2000.

At this juncture, smoke detectors ought to be going off all over the building or the lake, wherever it was that they were meeting at the time.

The point is that under both the code of conduct and relevant ethics -- relevant gift rules, a judge should not solicit anything of value from anyone seeking official

action or doing business with the court.

And it makes these rules, the severity -- the seriousness of these rules are manifest just in the context of this case.

Put yourself in the position of Mr. Amato in this case. You are a lawyer with a lot hanging in the balance for your client and a half-million-dollar legal fee for yourself hanging in the balance.

And it all rides on this particular judge, and this particular judge happens to be alone with you in a boat, asking you for \$2000. We're not talking here about well, can you be bought for \$2000, but would any lawyer in his right mind think it's worth risking alienating a judge at the point of decision over something like \$2000.

It's that kind of pressure, it's that kind of, you know, abuse of the judicial office to advance your own personal gain that is why we have these rules in the first place, and what makes it doubly problematic.

And it also cycles us back to this notion of should he have disqualified himself. This makes doubly clear that he needs to get off this case, that this judge is actively involved in soliciting money from a lawyer in a pending matter.

And the judge understands, there's evidence to suggest the judge understands that this is a problem. . This

is money going under the table. This is money that's not being reported as a gift.

I mean, and so the idea does the judge understand that this information ought logically disqualify himself? Of course it does. So it's the nondisqualification, coupled with the gift violations, that to me makes this a very serious ethical lapse.

Q And did you understand that the money that went to Judge Porteous, both earlier and on the fishing boat episode, was in cash?

A Yes, that was my understanding, in an envelope delivered anonymously, which I think contributes to the conclusion that the judge understood this was not something that was on the up and up.

Q I'd like now to turn to Judge Porteous's relationship with Louis and Lori Marcotte and their bail bond business.

Have you formed an opinion as to Judge Porteous's conduct with regard to the Marcottes and their bail bond business in light of relevant ethical standards for judges?

A Yes. I think there's some -- some of the most significant problems that we confront in this entire impeachment arise out of this episode. And again, it has bite-sized pieces, and I can take the first piece and then

follow up from there.

Q Let's cut it into a few pieces anyway.

A Sure.

Q First of all, what is your opinion in broad terms?

A Well, I think certainly what we're dealing with here is a very traditional and -- form of corruption, a quid pro quo in which Judge Porteous is receiving various favors -- meals, trips, services -- and what Judge Porteous is providing are various services. He is setting bonds the way the Marcottes want them set, and he is providing various services otherwise, like expunging criminal record in a couple of -- in a couple of cases.

And to me, that quid pro quo raises several serious ethical problems.

First, again, it's a recurrent problem. The judge is lending the prestige of his office, he's abuse the prestige of his office, this time to favor the Marcottes' interests.

The judge should not accept, you know, under the code at the time, the judge should not accept any gifts or favors which might reasonably appear designed to affect his judgment or influence his conduct.

And in this case, Mr. Marcotte is quite clear, he thought of Judge Porteous as being on commission. I

mean, these gifts are designed to affect the judge's conduct.

Q Let me interrupt you for a moment. At this point with the Marcottes, the interaction is -- you understand that Judge Porteous is a state court judge?

A Yes, yes.

Q And the --

A And I'm referring to -- I'm referring to the model code and its -- and its corollary in Louisiana. I'm not referring to him in this first chapter as a federal judge.

Q Thank you.

A Furthermore, the judge needs to respect and comply with the law. And again, several judges were sent to prison for this. This is unlawful conduct, this kind of quid pro quo.

And a judge finally should act at all times in a manner that promotes public confidence in the integrity of the judiciary. That's not happening when judges are engaging in this kind of quid pro quo relationship.

Q I'd like now to turn to Judge Porteous's conduct in connection with his bankruptcy proceedings after he was a federal judge.

A Could I just add one thing? Because I think I'd like to talk about his -- when he is -- when he is a -- I'd

like to talk a little bit about his role as a federal judge.

Q I'm sorry, please.

A I wanted to mention something. This pattern of conduct continues when the judge serves on the federal bench, and I think that is part of the problem. It continues on, that we have two different events.

One is the judge expunging a record in -- on behalf of the Marcottes at a point where he has been confirmed but hasn't been sworn in. And it's certainly -- there is testimony to suggest that that was a calculated act.

The judge understood that this continuing effort to do favors for the Marcottes in exchange for favors for them required him to do another favor or called upon him to do another favor that he was willing to do but not at the expense of risking his confirmation with this body.

MR. TURLEY: Madam Chair, once again the witness is commenting on the evidence and saying what he believed happened in the case, as opposed to giving his legal expert opinion on what the rules are. He's holding court, this is argument on what he believes happened in the the case.

MR. BARON: May I respond?

CHAIRMAN MC CASKILL: Yes, you may.

MR. BARON: I was just going to say an expert

always gives the factual basis on which he's basing his opinion. Mr. Turley can cross-examine if he believes that factual basis is incorrect. But he actually has to set forward what he's basing his opinion on.

CHAIRMAN MC CASKILL: I agree. And the objection will be sustained.

MR. BARON: Sustained?

CHAIRMAN MC CASKILL: Excuse me. Overruled. I'm trying to turn off my colleague's BlackBerry alarm.

(Laughter.)

SENATOR KLOBUCHAR: My daughter, sorry.

THE WITNESS: The final point on this score is as to the meeting with new state judges while he is a sitting federal judge, we have a continuing quid pro quo relationship, and this seems to be another stage in it, which perpetuates my concern that this is a judge who is trading on his status as a judge, who is lending the prestige of judicial office to help out the Marcottes, or as Mr. Marcotte said, to bring strength to the table.

And to me, that is the factual predicate that gives rise to my concern that the judge is lending the prestige of office to advance his interests.

BY MR. BARON:

Q Let's now turn to Judge Porteous's conduct in connection with the bankruptcy proceedings. Have you

formed an opinion as to Judge Porteous's conduct in his bankruptcy proceedings in light of relevant ethical standards for judges?

A I have.

Q And what is that opinion?

A In my view, again, the ethical problems are pretty significant. But fortunately I think for this body, given the lateness of the hour, it is going to be very easy for me to explain this fairly briefly.

That should not imply that I think these are less than very serious concerns. It's just there's not as much -- you know, there's not as much facts to explain to -- it as predicate to my -- to the opinions that I'm expressing.

In the -- in the House report, it speaks in terms of, you know, numerous false statements and materials omissions on the official forms that he signed under penalty of perjury that were filed with the court.

These numerous statements -- you know, as perjury, the ethical problems that they create are twofold. One is a judge is under an obligation to follow the law, to comply with the law. That's the ethical duty.

This judge is perjuring himself. He is not following that ethical duty.

Moreover, it is made all the worse by the fact

that it is not just -- there's -- you know, there are different kinds of crimes. The ones that reflect on the judge's honesty are among the worst, because they not only qualify as a failure to comply with the law, but also with a failure of the judge to act at all times in a manner that promotes the integrity of the judiciary. They reflect badly on his honesty.

To make it even worse still, this is occurring in the context of a judicial proceeding. Public confidence in the courts is necessarily going to be undermined. To the extent that a judge is not only breaking the rules but breaking the rules in the context of a judicial proceeding. So for that reason, I think the lapse is serious.

Q In your view concerning the ethical issues, does it make a difference how much money the creditors got back out of the plan that was approved?

A No. The point is did he tell the truth when he was under oath, did he raise his right hand, as I have, and tell the truth.

If the answer is no, he's committed perjury, he has violated the law, end of that story, and it reflects badly on the integrity of the judiciary insofar as it goes to his honesty and character.

Q Now, are you aware that in the course of the bankruptcy proceeding, the judge entered a confirmation

order which, in effect, said that you're not -- you, the debtor, Judge Porteous, are not to incur additional debt without the written permission of the court once his plan had been confirmed? Do you recall that?

A Yes, uh-huh.

Q Are you aware of any activity, based on your reading and review, that Judge Porteous engaged in which might have violated that order?

A Am I aware of any activity which might have violated that order?

Q Yes.

A Only what's written in the House report, which suggests in the affirmative.

Q Are you talking about the gambling markers?

A Yeah.

Q Is it okay for anyone, much less a judge, if they disagree with a court order, to violate that order and ignore it?

A No. I think that the duty to follow the law includes the duty to -- to obey court orders, and the ethical issues implicated in deliberately violating the court order fall in the same category.

Q I want now to turn finally to Judge Porteous's conduct during the confirmation process. Have you formed an opinion as to Judge Porteous's conduct during

confirmation process? And there I want to include his responses to the FBI when he was interviewed, the questionnaires he filled out as part of the process and with regard to relevant ethical standards for judges.

A I have.

Q And what is that opinion?

A My opinion is that many of the same problems that we saw in the bankruptcy proceeding apply equally here, that we are looking at statements that were made under oath, we are looking at statements where, if to the extent the facts reveal that the judge did, indeed, perjure himself, we have a judge who is violating both the law and who is acting in a way that is -- that is not in the best interests of the judiciary, that reflects adversely on his impartiality -- on his integrity.

And I think the point here is it's a trickier question insofar as the questions are generally working, I mean the questions are is there anything in your personal life that could be used by someone to coerce or blackmail you, or alternatively, is there any unfavorable information that might affect your nomination.

In a lot of cases there's weasel room there, wiggle room there. But in a case where we have, you know, evidence of -- of curatorships with kickbacks, in cases where we have, in effect, a quid pro quo, which is very

close to a polite way of saying bribery, it's pretty clear that these are cases where -- these are subjects that could affect his nomination. Anyone in Judge Porteous's position would know that.

And they are also potentially the subjects of blackmail, that someone -- that doesn't mean that these people would blackmail him. They were friends of his. But could they, is what the question is, and could they -- could Judge Porteous be embarrassed or blackmailed by knowledge that he had been engaging in corrupt schemes.

And I think the answers certainly would seem to be yes. To the extent, therefore, answer -- "no" answers qualify as perjury, we have the same problem here that we had in the bankruptcy proceedings.

Q I'd like to go back for a moment to some of the earlier areas you covered. In your view, did Judge Porteous have a continuing obligation after the recusal hearing in the Liljeberg case, if conduct occurred that might affect or reflect on his impartiality or any dealings that he might have had with counsel in the case, did he have, in your view, a continuing duty to disclose any such activity to counsel in the case?

A I regard that continuing duty to disclose as part and parcel of his duty to disqualify. In other words, the point is that once -- that his duty to disqualify

himself on the grounds that his impartiality might reasonably be questioned was continuous.

And so when the gift is made, that, as I testified before, is all the more reason for why he needed to step aside.

Now, as to whether he needed to affirmatively disclose that fact, certainly the preferred practice, whenever you have doubts, is to err on the side of disclosure.

But to me the more serious ethical lapse is not that -- you know, there's so many other more serious things going on here that he has engaged in, an improper gift, that he's failed to disqualify himself, that he's failed to reveal it simply manifests to me the knowingness of the conduct.

Q Let me finally turn to the bankruptcy petition. Are you familiar that -- do you recall the fact concerning the name that he used when he initially filed the bankruptcy petition?

A Yes, that it was -- that was -- right, that he filed it under a different name than his own.

Q Ortous. Do you recall that?

A Yes.

Q That was amended within about a week and a half, 10 days, something like that, before the notice went out to

the creditors whom he listed on his bankruptcy petition.

Does that make a difference to you ethically that he -- that he signed -- that he filed the original petition in a false name and signed under penalty of perjury?

A No, no. I think that the -- when he is signing under penalty of perjury and he signs it, the fact that he is essentially signing under the wrong name strikes me as still being a problem.

MR. BARON: Thank you very much. I have no further questions.

CHAIRMAN MC CASKILL: It is 7:20, so we will break for the evening. And as I said, I hope you all will convey to each other your plans for calling witnesses tomorrow, and we will begin bright and early at 8:30 in the morning.

(Whereupon, at 7:21 p.m., the proceedings were adjourned, to be reconvened at 8:30 a.m., on Wednesday, September 15, 2010.)

C O N T E N T S

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
LOUIS MARCOTTE				
by Mr. Goodlatte	502		591	
by Mr. Turley		549		
by Chair McCaskill	608			
LORI M. MARCOTTE PARIGI				
by Mr. Goodlatte	610		650	
by Mr. Turley		617		
JEFFREY J. DUHON				
by Mr. Johnson	655		679	
by Mr. Meitl		669		
AUBREY WALLACE				
by Mr. Johnson	681		711	
by Mr. Turley		696		
RAFAEL GOYENECHÉ				
by Mr. Dubester	717		751	
by Mr. Meitl		739		
by Senator Kaufman	755			
CHARLES GARDNER GEYH				
by Mr. Baron	764			

-- continued --

E X H I B I T S

NUMBER	DESCRIPTION	RECEIVED
Porteous Exhibit 2005		501
Porteous Exhibit 2001		552
Porteous Exhibit 2002		552
Porteous Exhibit 2003		553
Porteous Exhibit 2004		554
House Exhibit 372B		566
House Exhibit 373A		566
Porteous Exhibit 2006		579
House Exhibit 447		587
House Exhibits 375, 241, 280, 71A and 71E		607
House Exhibits 350(1) and 351(1)		621
Porteous Exhibits 1112 and 1113		630
House Exhibit 119Z		645
House Exhibit 448		650
HP Exhibits 77A, 77B and 77C		675
House Exhibit 119A		696
House Exhibit 82		700
House Exhibit 81		700
House Exhibit 69D		730
House Exhibits 351(1) through (56) and		
House Exhibit 351(1) through (26)		761